

STATE OF VERMONT
DEPARTMENT OF VERMONT HEALTH ACCESS
VERMONT INFORMATION TECHNOLOGY LEADERS, INC.

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STANDARD CONTRACT FOR TECHNOLOGY SERVICES

1. **Parties.** This is a Contract for services between the State of Vermont, Department of Vermont Health Access (hereinafter called “State”), and Vermont Information Technology Leaders, Inc. (VITL) with a principal place of business in Burlington, Vermont (hereinafter called “Contractor”). Contractor’s form of business organization is 501(c)(3) non-profit organization. It is Contractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. **Subject Matter.** The subject matter of this Contract is services generally about development, and operations, of the Vermont Health Information Exchange (VHIE). Detailed services to be provided by Contractor are described in Attachment A.

3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$9,349,410.00

4. **Contract Term.** The period of Contractor’s performance shall begin on January 1, 2022 and end on December 31, 2023. This Contract may be renewed upon mutual agreement by both Parties for an additional three (3) one-year terms.

5. **Prior Approvals.** This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this Contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. **Termination for Convenience.** This Contract may be terminated by the State at any time by giving written notice at least thirty (30) days in advance. In such event, Contractor shall be paid under the terms of this Contract for all services provided to and accepted by the State, which will not be unreasonably refused, prior to the effective date of termination.

8. **Attachments.** This Contract consists of 71 pages including the following attachments which are incorporated herein:

Attachment A – Statement of Work

Exhibit 1 – VITLAccess Terms and Conditions for State Health Providers

Attachment B – Payment Provisions

Attachment C – Standard State Provisions for Contracts and Grants

Attachment D – Other Terms and Conditions for Information Technology Contracts Attachment E – Business Associate Agreement

Attachment F – Agency of Human Services’ Customary Contract/Grant Provisions Attachment G – Business Partner Agreement

Appendix I – Subcontractor Approval Form

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9. Order of Precedence. Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:

- 1) Standard Contract
- 2) Attachment D - Other Terms and Conditions for Information Technology Contracts
- 3) Attachment C - Standard State Provisions for Contracts and Grants
- 4) Attachment A - Statement of Work with Exhibits
- 5) Attachment B - Payment Provisions
- 6) Attachment E - Business Associate Agreement
- 7) Attachment F - Agency of Human Services' Customary Contract/Grant Provisions
- 8) Attachment G - Business Partner Agreement
- 9) Other Attachments

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

STATE OF VERMONT

Department of Vermont Health Access

DocuSigned by:

Adaline Strumolo 12/30/2021

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ADALINE STRUMOLO, INTERIM COMMISSIONER DATE
NOB 1 SOUTH, 280 STATE DRIVE
WATERBURY, VT 05671-1010
PHONE: 802-241-0246
EMAIL: ADALINE.STRUMOLO@VERMONT.GOV

CONTRACTOR

Vermont Information Technology Leaders

DocuSigned by:

Beth Anderson

12/30/2021

79BE3E9AE223445...

BETH ANDERSON, PRESIDENT & CEO DATE
1 MILL STREET, SUITE 249
BURLINGTON, VT 05401
PHONE: 802-861-1935
EMAIL: BANDERSON@VITL.NET

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ATTACHMENT A – STATEMENT OF WORK

1. Background:

Pursuant to 18 V.S.A. § 9352, Contractor is designated by the State to operate the Vermont Health Information Exchange (VHIE). This Contract describes Contractor's specific obligations to operate, maintain and enhance the VHIE and associated and supporting products, infrastructure, and services. Additionally, this Contract includes clinical data access to support compliance with the federal *Patient Access & Interoperability Rules*.

The terms of this Contract include operations of the VHIE System (Systems Management), including but not limited to, the Master Person Index, Rhapsody Integration Engine, and Terminology Services, and supporting system and operations Security activities, as demonstrated by direct outcomes measures or service level standards.

The terms of this Contract also include system enhancements of the VHIE and associated data services to support Medicaid operations, Medicaid providers, and Medicaid patients, as well as other health system users. The enhancements are categorized as follows:

- Connecting Patients, Providers & Other Users to Health Data
- Final Implementation of the VHIE Unified Health Data Architecture
- Leveraging the VHIE Unified Health Data Architecture to support and enhance public health efforts
- Enhancing Medicaid operations with health data and data services
- Further streamlining the VHIE Unified Health Data Architecture and adding additional data types in service of enhanced population health management and health plan performance management

System operations, transitions, and upgrade work included in this contract are intended to enable compliance with the Health and Human Services (HHS) interoperability and patient access provisions of the 21st Century Cures Act (Cures Act) related to health information exchanges.

Contractor shall perform its obligations under this Contract in coordination and collaboration with the State and the State's other Contractors.

2. Definitions:

- 2.1. *ADT* means a category of Health Level 7 message format typically used for patient demographics updates and for admission, discharge, and transfer events.
- 2.2. *Aggregation* means gathering data from multiple sources into a single representation of the sources.
- 2.3. *Architectural Quality Process* means a structured process resulting in a document that supports articulation of business, application, information, and technology design considerations that together describe how a proposed or existing solution meets the defined business needs and goals.
- 2.4. *Blueprint* means the Vermont Blueprint for Health as described in 18 V.S.A. Chpt. 13.
- 2.5. *Business Associate* means Contractor and any other contractor working with Contractor to fulfill its responsibilities under this Agreement, including but not limited to contractor(s), when any of them perform services described in 45 C.F.R. § 160.103.
- 2.6. *Continuity of Care Document (CCD)* means the specification which is an XML-based markup standard intended to specify the encoding, structure, and semantics of a patient summary clinical document for exchange.
- 2.7. *Certified Electronic Health Record Technology (CEHRT)* is a health IT product that has successfully passed testing on specific standards and criteria selected by the Centers for Medicare and Medicaid Services for use in specific programs. CEHRT can be achieved through use of a single system or a combination

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of modules that can be used together.

- 2.8. *Collaborative Services* means a collaborative project involving Contractor, and the HIE Steering Committee to streamline data services required to improve healthcare in the State of Vermont.
- 2.9. *Connectivity Criteria* means the document that fulfills the obligation set forth in 18 V.S.A. § 9352(i)(2) that, "VITL, in consultation with health care providers and health care facilities, shall establish criteria for creating or maintaining connectivity to the State's health information exchange network. VITL shall provide the criteria annually on or before March 1 to the Green Mountain Care Board established pursuant to chapter 220 of this title."
- 2.10. *Cross Community Access* means the capability to query and retrieve patient medical data within the VHIE using a common set of policies and standards.
- 2.11. *Cureous Innovations (CI)* means the subsidiary of HealthInfoNet in Maine that is the currently contracted vendor for hosting Rhapsody and TermAtlas for the Contractor.
- 2.12. *21st Century Cures Act: Interoperability, and Information Blocking, and the ONC Health IT Certification Program Final Rule* means implementation of certain provisions of the 21st Century Cures Act, including Conditions and Maintenance of Certification requirements for health information technology (health IT) developers under the ONC Health IT Certification Program (Program), the voluntary certification of health IT for use by pediatric health care providers, Patient APIs, and reasonable and necessary activities that do not constitute information blocking.
- 2.13. *Deliverables Acceptance Document (DAD)* means an official document validating a deliverable has been reviewed and accepted or rejected by a State representative.
- 2.14. *Deliverables Expectations Document (DED)* means an official document representing what will be included in a deliverable before it is developed and submitted to the State by Contractor.
- 2.15. *Design, Development and Implementation (DDI)* means a process that encompasses all design, development and implementation activities required to effectively implement a technical solution.
- 2.16. *Direct Project* also known as *Direct*, *Direct Exchange*, and *Direct Secure Messaging* means the national encryption standard for securely exchanging clinical healthcare data via the internet. The Direct Project specifies the secure, scalable and standards-based method for the exchange of Protected Health Information (PHI).
- 2.17. *Electronic Health Record (EHR)* means a digital version of a patient's chart. EHRs are real-time, patient-centered records that make information available instantly and securely to authorized users.
- 2.18. *Emergency Medical Services (EMS)* means emergency services which treat illnesses and injuries that require an urgent medical response, providing out-of-hospital treatment and transport to definitive care.
- 2.19. *Go-live* means the point at which the system and/or its sub-component(s) is/are officially and formally available to users in the production environment, who can then initiate transactions in the new system.
- 2.20. *Acceptance* means proof that the system and/or its sub-component(s) functions correctly as defined in the acceptance criteria for Go-live.
- 2.21. *Health Care Organizations (HCO)* includes licensed medical providers such as private and commercial labs, hospitals, primary care and specialist practices, and community providers.
- 2.22. *Health Information Exchange (HIE)*, when used as a verb, means the electronic movement of health-related information among organizations according to nationally recognized standards with the goal

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of facilitating access to and retrieval of clinical data to provide safe, timely, efficient, effective, equitable, patient-centered care. An HIE, when used as a noun, refers to an organization that collects health information electronically, manages it, and makes it available across the health care system.

- 2.23. *HealthInfoNet (HIN)* means the Maine HIE, whose subsidiary is Cureous Innovations.
- 2.24. *Incident* means any known successful or known unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interfere with systems operations within an information system.
- 2.25. *Integration Engine* means the engine that provides an interfacing solution for health enterprises requiring comprehensive messaging between information systems. This allows HCOs to manage and streamline message exchange between applications, databases, and external systems.
- 2.26. *Interface* means a connection used for transferring certain types of data between a source or destination organization and VHIE with the ability to exchange data at the syntactic level. This includes but is not limited to transfer of demographic and clinical information from the HCO Electronic Health Record (EHR) and other clinical or administrative systems, transfer of laboratory orders and results, and transfer of diagnostic procedure orders and results. There are two parts to every interface: (1) an interface from the EHR vendor to the VHIE to send data and (2) the corresponding interface in the VHIE to receive the data from the EHR.
- 2.27. *Location* means a unique geographic location providing healthcare and can either be a single practice, hospital, or lab, or can be an offsite location of a larger healthcare system like a hospital or group of practices.
- 2.28. *Master Person Index or Master Patient Index (MPI)* means a unique identifier for every patient in the State of Vermont regardless of where they obtained health care.
- 2.29. *Meaningful Use* shall have the same meaning as in Title 42, Part 495 if the Code of Federal Regulations.
- 2.30. *MedicaSoft* means the vendor contracted to provide the foundations of the New Data Platform.
- 2.31. *Medication History* means a compilation of filled prescription information from a medication history service based on data gathered from participating pharmacies across the US, to include Vermont, and includes information such as medication name, strength, quantity, and fill date.
- 2.32. *Medicity or Health Catalyst Interoperability (HCI)* means the currently contracted vendor that provides infrastructure and other products and services to the State, by and through a contractual relationship with Contractor, in support of the VHIE and other HIE activities.
- 2.33. *Office of the National Coordinator (ONC)* is the principal federal entity charged with coordination of nationwide efforts to implement and use the most advanced health information technology and the electronic exchange of health information.
- 2.34. *Onboarding* means the process by which the providers at an HCO are authenticated, granted access to a VHIE provider service, and trained in the use of that provider service. This process consists of three steps: (1) profiling the HCO, (2) enrolling authorized providers, and (3) launching the service at that HCO.
- 2.35. *Outcomes Based Certification (OBC)* means the Center for Medicare and Medicaid Services' systems certification process that aims to evaluate on how well Medicaid information technology systems support desired business outcomes.
- 2.36. *Production* environment means the setting where the system, software and other services related

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to the system are put into operation for their intended uses by end users.

- 2.37. *Promoting Interoperability Program (PIP)* was established by CMS as the Medicare and Medicaid EHR Incentive Programs (now known as the *Promoting Interoperability Programs*) to encourage clinicians, eligible hospitals, and CAHs to adopt, implement, upgrade (AIU), and demonstrate meaningful use of CEHRT.
- 2.38. *Rhapsody* means the integration engine used by the VHIE to accept, process, transform and route messages to various downstream locations. Rhapsody has been identified as a critical service for the VHIE.
- 2.39. *Reporting Data Repository* means the secure database where patient demographics and clinical data are stored in the VHIE for reporting use cases. Data in the repository can come from the transactional database or external sources.
- 2.40. *Security* means measures and procedures to protect the information within the VHIE and its supporting infrastructure through detailed reporting on incidents, incident notifications, restoration, and all related Security provisions. Security has been identified as a critical service for the VHIE.
- 2.41. *Single Sign On (SSO)* is the capability to log into multiple related, but independent software systems using one username and password.
- 2.42. *Stakeholder* means an individual, group, or organization, who may affect, be affected by, or perceive itself to be affected by a decision, activity, or outcome of a project.
- 2.43. *State Program Manager* means the Health Information Exchange program manager who oversees a number of projects and programs, managing performance and providing resources and oversight to the entities under their watch.
- 2.44. *Technical Support Services* means hardware and software support to resolve VHIE services issues.
- 2.45. *Terminology Services or Terminology Services Engine* means an application used to standardize data to a common terminology, including national and international code systems and value sets, enriching the data with context and meaning. Terminology Services has been identified as a critical service for the VHIE.
- 2.46. *Transactional Warehouse* means a real-time database (DB) that consolidates data from a variety of sources, including clinical, for storage and use.
- 2.47. *Unified Health Data Architecture or Unified Technical Architecture* means the systems of the VHIE that work to provide Vermont stakeholders with a centralized resources dedicated to aggregating health data from various sources, matching patient records across systems, capturing patient consent preferences, translating local terminology into a standard format (code set), and generally making health data interoperable and most useful to those authorized to access PHI in order to provide and coordinate care, support payer operations related to treatment, inform quality review, and support, improve or evaluate health care operations.
- 2.48. *Unique Identity* means assigning each patient a unique identifier to create a master patient index is essential to ensure data interoperability across all the points of patient care within a health system.
- 2.49. *Universal Master Patient Index (UMPI)* means a unique identifier for every patient in the State of Vermont regardless of where they obtained health care. UMPI has been identified as a critical service for the VHIE.
- 2.50. *Verato* means the currently contracted vendor that provides UMPI solution to the State, by and through a contractual relationship with Contractor, in support of the VHIE and other HIE activities.
- 2.51. *VDH* means the Vermont Department of Health.

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- 2.52. *VHIE Supporting Infrastructure* means any technical infrastructure, hardware, and software utilized by Contractor to provide services, capabilities, and support to the operation, and expansion of health information exchange in Vermont.
- 2.53. *VHIE Services Modules* means foundational HIE technology deployed through the Collaborative Services project including the Master Patient Index, Terminology Services, Integration Engine, Transactional Warehouse and Provider Portal.
- 2.54. *VITLAccess* means one of several service offerings provided to authorized users. VITLAccess is a secure Internet portal which provides authorized users, with proper patient consent, a patient-centered view of the Personal Health Information (PHI) available through the VHIE.
- 2.55. *VITLDirect* is a secure messaging service that enables health care organizations to send messages to other providers.

3. Operations – Description of Services

Contractor shall maintain the technical infrastructure, software, hardware, and architecture of the VHIE.

- 3.1. Contractor shall meet the service level and other operational requirements listed in this Section 3 and demonstrate efficient and effective operation of the VHIE to address the following outcomes:
- i. Outcome 1 – Direct Care/Care Coordination: Improve Medicaid providers' ability to effectively treat and coordinate care for Medicaid beneficiaries by creating one health record for every Vermonter accessible to treating providers and care coordinators.
 - ii. Outcome 2 – Direct Care/Care Coordination: Enable longitudinal, population-based evaluation of Medicaid patients to optimize Medicaid services and care delivery.
 - iii. Outcome 3 – Event Notification: Improve Medicaid providers' ability to effectively treat and coordinate care for Medicaid beneficiaries by alerting providers to admissions, discharges, and transfers of their patients.
 - iv. Outcome 4 – Results Delivery: Improve Medicaid providers' ability to effectively treat and coordinate care for Medicaid beneficiaries by delivering laboratory, radiological, and transcribed reports through the VHIE.
 - v. In consistent reporting to the State, as defined through the DED process, the Contractor shall demonstrate how the VHIE system has met the following requirements aimed at addressing the outcomes listed in this section 3.1.
 - a) Operate the VHIE Services Modules to ensure they are operational seven (7) days a week and 24 hours a day with at least a 94% average monthly uptime. This infrastructure includes the Master Patient Index Tool, Integration Engine, Terminology Service, Provider Portal, Direct Secure Messaging and Transactional Warehouse;
 - b) Provide the State with Contractor's downtime notification policy detailing the notification procedures in the case of downtime of any of Contractor's services provided under this Contract on an annual basis. The policy shall describe which customers are notified after what period of downtime, and which services apply to this policy;
 - c) Report unplanned downtime periods exceeding two (2) hours in duration of the VHIE, VITLAccess, VITLDirect, direct connection to State systems, or other data exchange services to the State Program Manager at the time of VHIE client notification. Contractor shall notify clients of planned downtime activities that impact use of the VHIE;

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- d) Operate disaster recovery capabilities for Rhapsody and TermAtlas, as defined in the Disaster Recovery Plan provided by CI to the Contractor and approved by the State, to recover from unplanned downtime events in the VHIE production infrastructures;
- e) Operate the technology that allows authorized health care providers the ability to obtain Medication History through VITLAccess as provided by Contractor's Medication History vendor.
- f) Contractor shall maintain consent management technical and operational infrastructure to support the State's consent protocols for access to data on the VHIE. Contractor shall also support patient education about consent choices by making resources available to health care organizations and directly to patients.
- g) Maintain network to network data exchange service implementations from EHRs such as eHealth Exchange initiator and responder capability, which is also called Cross Community Access.
- h) Report on health records made available to treating providers through the VHIE demonstrated by number of VITLAccess users, number of HCOs using VITLAccess divided by the number of potential HCOs who could use VITLAccess, number of patient queries through VITLAccess.
- i) Utilize the VHIE Technical Support Services Team to support client and client EHR vendor issues related to maintaining connections to the VHIE and its supporting infrastructure and respond to all client technical support inquiries within 2 business days.
- j) Maintain the levels of performance (including, but not limited to, a User Directory to maintain roles and privileges), availability, and Security for the VITLAccess web-based service as defined in the correlating DED.
- k) Provide on-demand training or support resources to help VITLAccess users learn how to use the portal, including but not limited to resources that will be accessible in emergency situations where time to train is limited and quick, task-oriented how-to's are needed. Provide a list of live trainings performed for emergency healthcare response/preparedness organizations to introduce organizations and staff to how to use VITLAccess.
- l) Report the number of Medicaid patient records transmitted from the VHIE to the Medicaid care coordination tool show how the VHIE data system can provide data which enables care coordination efforts for Medicaid beneficiaries.
- m) Report on number of audits of accessed data, and requests for records from individuals including format in which records are transmitted. Provide information about patient education activities related to Vermont's consent to share health data via the VHIE policy.
- n) Report on number of ADT messages sent to event notification services.
- o) For Medicaid beneficiaries, maintain an identity matching rate of at least 90% (i.e., Medicaid Match Rate).
- p) Operate and maintain the Verato Master Person Index including work with the contributing organizations and their vendors to address any issues related to identity management and person records.
- q) Operate and maintain a Terminology Services (TS) engine. For this Contract Term, Contractor shall continue to operate and maintain the TS engine to standardize local codes and unmapped

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data elements in HL7 Version 2 (ADT, Lab, Rad, Trans, VXU), HL7 Version 3 (CCD) message types, and FHIR Resources.

- r) Report on number of LAB, RAD, TRANS messages captured by the VHIE and made available to health care organizations through VHIE.

3.2. Contractor shall provide and operate the VHIE to meet the following public health outcomes and requirements:

- i. Outcome 5 – Public Health: Enhance public health management of the Medicaid population (and general population) by automating capture and exchange of public health data through the VHIE system.
- ii. Outcome 6 – Public Health: Support response to epidemic monitoring and emergency response by capturing and making available related data for the state’s Public Health Authority.
- iii. In reporting to the State, as defined through the DED process, the Contractor shall demonstrate how the VHIE system has met the following requirements aimed at addressing the outcomes listed in this section 3.2:
 - a) Transport and validate Laboratory HL7 messages, or other message types as approved by the VDH, in accordance with the National Institute for Standards and Technology (NIST) Electronic Laboratory Reporting requirements, or VDH minimum requirements for other message types, and deliver messages to the VDH Rhapsody engine for ingestion into the National Electronic Disease Surveillance System (NEDSS) Base System (NBS).
 - b) Report on LAB messages captured in the VHIE and transmitted to the Public Health Authority, and the percent of total death records transmitted from the Death Registry that are integrated to the VHIE.
 - c) Transport and validate immunization HL7 messages, or other message types as approved by the Vermont Department of Health (VDH), in accordance with the Center for Disease Control (CDC) Immunization Implementation Guide, as modified by the VDH Immunization Implementation Guide, and deliver messages to the VDH Immunization Registry. Provide a list of immunization validations implemented specific to meeting the VDH Immunization HL7 Implementation Guide annually, or if updated, and provide a VXU Immunization errors line chart to show the number of errors reported each month over time.
 - d) Work with designated representatives from the State to develop a strategy to better integrate VHIE and Vermont Department of Health infrastructure and capabilities
 - e) Continue to support hospitalization reporting to support the COVID-19 response effort, as previously defined.
 - f) Work with the Vermont Department of Health to produce a plan for evaluating race and ethnicity data discrepancies.
 - g) Test the health disparities data evaluation process in accordance with the produced plan.

3.3. Contractor shall operate the VHIE to meet the following outcomes and requirements related to Medicaid operations.

- i. Outcome 7 – Medicaid operations: Availability of the HIE system to positively impact health policy priorities.
- ii. In reporting to the State, as defined through the DED process, the Contractor shall demonstrate how

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the VHIE system has met the following requirements aimed at addressing the outcomes listed in this section 3.3.

- a) Contractor shall leverage the newly implemented Collaborative Services platform to support Medicaid services, including but not limited to, data reporting for the Blueprint for Health Program producing the Blueprint VCR extract based on the Blueprint specified priority one data elements for the initial extract at a minimum, and with a cadence as determined through the DED process.
- b) Contractor shall continue to manage the subscription process for the hosting service at Knack for the Blueprint Portal, as required by the Blueprint team. The Blueprint portal includes an interface for sharing Blueprint practice and connectivity data with VITL for the purpose of facilitating any future data quality work conducted with Blueprint practices.
- c) Maintain Medicaid claims data connection in accordance with standards set in VHIE Connectivity Criteria and transmission requirements as articulated by Vermont Medicaid.

3.4. Qualified DVHA and VDH personnel shall have access to the VHIE through its provider portal, VITLAccess, in accordance with the terms and conditions set forth in Exhibit I to this Attachment A.

Contractor shall provide, as set forth in Exhibit 1 of this Attachment A, access to Medicaid beneficiary records in the VHIE to State personnel who are “health care providers” under Vermont law, in order to facilitate the State’s provision of case management and care coordination activities for Vermont Medicaid beneficiaries, and to State personnel working under or in support of the Vermont Department of Health to support the State’s public health operations.

4. Security – Description of Services

- 4.1. Contractor shall demonstrate that effective security measures and procedures are in place to protect the information within the VHIE and its supporting infrastructure through detailed reporting on incidents, incident notifications, restoration, and all related security provisions.
- 4.2. Contractor shall maintain security of the VHIE system and meet the following requirements in doing so:
 - i. maintain a prioritized, risk-based approach to security through maintenance of a National Institute of Standards and Technology (NIST) cybersecurity framework (CSF) assessment; and
 - ii. provide best practice, secure infrastructure for the VHIE and its supporting infrastructure through continuous process and procedural improvement towards a CSF that supports NIST moderate level compliance.

4.3. Security – Deliverables:

The plan of action and milestones outlined in NIST 800-53 *Security and Privacy Controls for Federal Information Systems and Organizations* shall serve as the Plan of Action and Milestones (POA&M) template to be used as a project plan for meeting compliance with the requirements of this contract. Contractor shall:

- i. Present the POA&M to the Agency of Digital Services (ADS) Security Lead on a monthly basis.

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Contractor's presentation shall include progress made in remediating identified issues and any new issues that have arisen. The ADS Security Lead shall use security guidelines and standards set forth by the Center for Medicare and Medicaid Services (CMS) to guide his/her evaluation of the presented materials. Approval of Contractor's monthly reports is contingent upon State approval of remediation timelines;

- ii. Annually obtain or perform security risk assessments for Contractor's third parties that transmit, process, or store data under this Contract. Third parties may include but are not limited to vendors whose systems store or process VHIE data. Contractor shall deliver reports detailing each security risk assessment to the State within fifteen (15) calendar days of completion of the report, but no later than thirty (30) calendar days before the end of the Contract term;
- iii. Ensure that test environments mirror production environments in patching, security controls, and security assessments and that test environment data is scrubbed after each use. Contractor shall provide a signed attestation annually stating this occurred; and
- iv. Furnish the following reports and adhere to the reporting requirements in the National Institute of Standards and Framework's Cybersecurity Framework/Internal Revenue Service (NIST- CSF/IRS) table below:

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NIST-CSF/IRS Reporting Requirements				
NIST CSF Reference	Task name	Deliverable	Periodicity	Deliverable Due Date
DE.CM-3	Privileged Account review	<i>Signed Attestation</i>	<i>Weekly (minimum)</i>	<i>End of Each State Fiscal Year Quarter</i>
DE.AE - 2-5	Audit log review	<i>Signed Attestation</i>	<i>Weekly (minimum)</i>	<i>End of State Fiscal Year Each Quarter</i>
DE.CM - 1, 4, 5, 6, 7	Continuous monitoring/Security metrics report	<i>Signed Attestation</i>	<i>Monthly</i>	<i>End of Each State Fiscal Year Quarter</i>
ID.RA-6	POAM Review	<i>POAM deliverable</i>	<i>Monthly</i>	<i>Monthly</i>
DE.CM-8	Vulnerability Assessment	<i>Executive summary from Vulnerability scans</i>	<i>Quarterly</i>	<i>Quarterly</i>
PR.AC - 1, 2, 3, 6, 7	System Access review	<i>Signed Attestation</i>	<i>180 days</i>	<i>180 days from the last System Access Review</i>
PR.AC -4	Roles review for separation of duties -	<i>Signed Attestation</i>	<i>Annual</i>	<i>Annual</i>
PR.IP-9	Contingency plan review/test	<i>Contingency Plan documentation and signed Attestation training was completed</i>	<i>Annual</i>	<i>Annual</i>
PR.IP-10 RS.CO-1	Incident Response Plan review & training	<i>Incident Response Documentation and signed attestation that certifies that Incident Response Tabletop exercise has been completed</i>	<i>Annual</i>	<i>Annual</i>
ID.RA- 1-6	Risk Assessment	<i>Risk Assessment Documentation</i>	<i>Annual</i>	<i>Annual</i>
PR.AT-1-5	Awareness training	<i>Signed Attestation</i>	<i>Annual</i>	<i>Annual</i>
PR.IP-2	Review System Security Plan and update	<i>System Security Plan Documentation</i>	<i>Annual</i>	<i>Annual</i>

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PR.IP-9	Disaster recovery presentation and Review	<i>Disaster Recovery Documentation</i>	<i>Annual</i>	<i>Annual</i>
ID.RA-3,4,5	System wide Security Assessment	<i>Results of independent assessment</i>	<i>Annual</i>	<i>Annual</i>
ID.RA-1	Pen Test	<i>Results of penetration test</i>	<i>Annual</i>	<i>Annual</i>
ID.RA-1	Static/Dynamic Code Analysis or peer review	<i>Signed Attestation</i>	<i>Major release or when security impact triggered</i>	<i>As Needed</i>
ID.GV-1	Contractor Governing Board Security Policy review	<i>Signed Attestation</i>	<i>Annual</i>	<i>Annual</i>

5. Connecting Patients, Providers & Other Users to Health Data – Description of Services

Contractor shall work to increase the data sources contributing to the data in the VHIE and increase meaningful access to health data on the system through means such as a provider portal, direct feeds to EHR and care coordination systems, and providing access to patient data through third-party applications as directed by federal interoperability rules.

To facilitate the sharing of health records, the Contractor will follow existing and new standard data exchange transport protocols including putting support for FHIR APIs in place for both HCO and Patient uses. As called for in 45 CFR Parts 170 and 171, RIN 0955-AA01, CMS's Interoperability and Patient Access Final Rule (CMS-9115-F) identifies HL7 FHIR as the preferred standard to support data exchange via secure APIs and US Core Data for Interoperability (USCDI) version 1 data set for defining electronic health information (EHI). Contractor shall comply with this standard by the deadlines articulated in associated federal regulations. Interfaces shall be developed by Contractor in partnership with HCOs and their respective EHR vendor(s). Data in the VHIE is mapped to FHIR; data that HCOs contribute to the VHIE in a standard format will be made available via the proposed new FHIR APIs. These APIs will provide a standard way for the VHIE stakeholders to exchange data, and will enable patients to access to their data electronically.

Contractor shall:

- i. Implement a minimum of fifty (50) Interface connections that will be mapped to the FHIR DB with HCO Locations that are prioritized based on the Interface Prioritization Matrix by the HIE Steering Committee. Attestation by the HCO or their vendor will be provided confirming that the interface is live and functioning as expected.
- ii. Leverage the requirements needed for a VHIE Results Delivery solution to execute a Request for Proposals (RFP) for vendor solutions. The Contractor shall provide the state with a procurement strategy, the executed RFP and a summary of results upon evaluating responses to the RFP.
- iii. Implement the selected VHIE Results Delivery solution.
- iv. Prepare a cutover document to detail how affected VHIE systems may connect to the eHealth Exchange hub,

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- a national network to support nationwide access to patient data.
- v. Implement and test initiator and responder connections from the VHIE to the eHealth Exchange hub.
- vi. Develop user education and training resources to support the launch of a new provider portal in the form of live training, a training webinar recording for local security officers and users, quick how-to videos, and a user manual.
- vii. Launch the new provider portal as demonstrated by a list of live organizations transitioned for use of the new portal.
- viii. Add prescription fill history to the provider portal for authorized users.
- ix. Demonstrate eHealth Exchange querying live in provider portal.

6. Final Implementation of the VHIE Collaborative Services Project – Description of Services –

Contractor shall complete implementation and technical transitions of the VHIE related to the Collaborative Service Project system-wide enhancements to develop the VHIE for use as a central component of Vermont's Unified Health Data Architecture.

To facilitate work under this section, Contractor shall:

- i. Provide a test plan for the Data Repository upgrade from FHIR R3 to R4.
- ii. Attest to the application of standard FHIR R4 release including all impacted clinical resources. Customizations to R4 required for State data must be approved by the State prior to implementation.
- iii. Attest to the application of standard FHIR R4 release including all impacted claims resources. Customizations to R4 required for State data must be approved by the State prior to implementation.
- iv. Design approach for use of the State's Mulesoft/Okta infrastructure for development of API(s) and determine State and Contractor partnership regarding shared licensing arrangement.
- v. Attest to the completion of patient-API testing.
- vi. Provide technical specifications for access and use of Patient API and attestation of live API functionality.
- vii. Provide a plan for defining and prioritizing additional API needs.
- viii. Provide education materials for patient facing education on use of the API to access patient health data.
- ix. Develop technical documentation for third-party API users, including but not limited to security and deployment protocols.
- x. Maintain legacy operations to ensure complete transition from legacy systems to current operating systems. Any required costs to be approved in advance through proposal delivered by Contractor to State no later than June 30, 2022

7. Leveraging the Unified Health Data Architecture to Support and Enhance Public Health Efforts – Description of Services

Following integration efforts that occurred in response to the COVID-19 pandemic, the next phase of integration between the Vermont Department of Health and the Vermont Health Information Exchange (VHIE) targets bi-directional exchange of immunization data between the State's Immunization Registry and the VHIE to ensure records on the VHIE are complete and enhance records made available to providers at the point of care.

To facilitate work under this section, Contractor shall:

- i. Design an approach to integrating the State's Immunization Registry (IMR) with the VHIE, utilizing the State's MuleSoft and Okta solutions
- ii. Execute deliverables as approved in the designed approach to IMR and VHIE integration.

8. Enhancing Medicaid Operations with Health Data and Data Services available through the VHIE – Description of Services

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Contractor shall support the State's efforts to meet or exceed the requirements of Medicare and Medicaid Programs; Patient Protection and Affordable Care Act; Interoperability and Patient Access for Medicare Advantage Organization and Medicaid Managed Care Plans, State Medicaid Agencies, CHIP Agencies and CHIP Managed Care Entities, Issuers of Qualified Health Plans on the Federally-Facilitated Exchanges, and Health Care Providers (the "Interoperability Rule"), 85 FR 25510 (May 5, 2020). The specifications of delivery will be articulated in this contract, which will be augmented through the Specifications Order process as noted in Section 11.

9. Further Streamlining the HIE Technical Architecture and adding additional data types – Description of Services

The State continues to design Medicaid population health programs with the notion that a complete understanding of a person's health experience and the factors influencing their health is essential to impacting quality of care, coordination of care, cost of care, and provider burden. The HIE is essential to ensuring that the State has the needed data to impact health policy priorities, and this funding will be used to develop and use the HIE system for this purpose. This includes, but is not limited to, consolidating data systems to streamline the HIE function of collecting health data to include clinical, claims, social determinants of health and other clinically sensitive data, and developing reporting infrastructure to use longitudinal health record data to inform Medicaid operations.

To facilitate work under this section, Contractor shall:

- i. To enhance reporting infrastructure, design and develop implementation strategy of data architecture for data tables, data elements, indices, referential integrity, reporting data model, and access points.
- ii. Develop a stakeholder engagement plan for documenting current and future VHIE reporting needs.
- iii. Execute implementation activities to occur in 2022 as directed by approved reporting infrastructure implementation strategy.
- iv. Continue the coordination of the Part II+ Group of the Health Information Exchange Steering Committee as described in the State's Health Information Technology (Exchange) Strategic Plan.
- v. To advance the possibility of exchange of substance use disorder data through the VHIE, continue the coordination of a program of education for mental health and substance use disorder treatment organizations, including but not limited to Vermont's Designated Agencies, focused on VHIE capabilities and potential uses of the VITLAccess provider portal.
- vi. Develop requirements specifications for ingesting social determinants of health data onto the VHIE with consideration for standards set by the USCDI and the Gravity Project.
- vii. Design an implementation approach for ingestion of social determinants of health data, due no later than August 2022, and begin implementation as approved by State.

10. Deliverables Expectations Document (DED) Process:

- i. DED Development:
 - a. Contractor shall provide to State an evaluation of the existing DED catalog and a schedule and plan for delivering updated and new DEDs for all deliverables described in Attachment B of this Contract within fifteen (15) days of Contract execution.
 - b. All DEDs shall include deliverable description, definitions, acronyms and abbreviations, timeline for the development and review processes, members of the review and approval team, deliverable requirements and acceptance criteria.
- ii. DED Review and Approval Process:
 - a. Contractor shall work with State to develop DEDs and then submit to the State for review.
 - b. The State shall have ten (10) business days to review and approve the DED, or to provide comments

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if the DED is not acceptable. During this ten (10) day period, the State may schedule and conduct a joint walkthrough of the DED with Contractor so that Contractor can make real-time updates based on State feedback. At the conclusion of the walkthrough, the Contractor and State shall confirm that updates to the DED are acceptable to both parties.

- c. If State provides comments to Contractor on or before the end of the ten (10) day period, Contractor shall have no more than ten (10) business days to incorporate comments and resubmit the DED to State for electronic approval.

iii. DED Revision Process:

- a. A DED may be reopened for modification (Revised DED) upon mutual agreement of the State Program Manager and Contractor to address minor changes such as correcting and/or clarifying criteria. It is understood that generally a DED may not be modified more than once per Contract year. Until a Revised DED has been approved by the State, existing DED criteria shall continue to apply.
- b. The State shall have five (5) business days upon receipt of Revised DED to confirm that comments provided to the Contractor have been addressed and approve or reject the DED.

11. Specification Orders:

Contractor and State acknowledge that any changes to the scope of work described in this Attachment A must follow the Health Information Exchange Portfolio Change Control Plan ("CCP"), to be provided to the Contractor prior to agreement execution.

During the Contract term Contractor and State may identify additional tasks to be performed by Contractor within the general scope of this Contract, the specific requirements of which shall be determined by mutual agreement. Contractor and State agree that these additional items of work shall be construed as "Specification Orders."

Specification Orders are intended to bridge a gap in funding due to regulatory changes to approved projects and to clarify and augment the existing tasks or scope of work within this context. Specification Orders may be necessary when an Advanced Planning Document is needed to secure Federal funding; however, the work needs to comply with federal regulations that are already mandated or underway.

Clarified and/or additional tasks under the Specification Order section of this agreement shall be submitted as specified by the Change Management Plan, in the form of a request for a Specification Order proposal to the Contractor by the State, or to the State from the Contractor. The Contractor has the right to submit modifications or deny any Specification Order submitted by the State. The State can submit modifications or deny proposed Specification Order submitted by the Contractor.

The final Specification Order document shall receive approval by the State, and be signed by the Contractor, the State Authorized Representative, and the DVHA Business Office. The Specification Order must indicate: scope, intended source of funds, payment provisions, points of contact, ownership of data, applicable data use agreement, and project specifics.

No Specification Order may increase the maximum amount payable under this contract, substantially deviate from the scope of this contract, or deviate from any term in any part or attachment to or of this contract. The Specification Order process shall not be used in lieu of the Change Request and amendment process where an amendment is appropriate. It is further understood and agreed that the contract maximum amount includes an amount specified in Attachment B specifically reserved and allocated to pay for the additional items of work described in this section. If and when this reserved amount is exhausted, no additional work may be requested,

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ordered, or approved except in accordance with the CCP.

Each Specification Order must clearly define payment either by rate per hour or deliverable received and approved and must be pre-approved before any work shall begin. The State will not pay for services that are not previously approved in a Specification Order by both authorized representatives responsible for the work. The State Authorized Representative and the DVHA Business Office have final authority over whether a Specification Order is initiated under this agreement. Specification Orders must be approved by the parties listed in the Change Management Plan

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EXHIBIT 1 TO ATTACHMENT A

VITLAccess Terms and Conditions for State Health Care Providers

Exhibit 1 sets forth the terms under which Contractor shall provide access to Medicaid beneficiary records in the Vermont Health Information Exchange (“VHIE”) to DVHA personnel who are “health care providers” under Vermont law, in order to facilitate the State’s provision of case management and care coordination activities for Vermont Medicaid beneficiaries, and by VDH personnel for authorized public health purposes

Section 1 - Definitions

As used in this Exhibit 1, the following terms shall have the definitions as described below:

- (a) “Authorized User” means an individual authorized by Contractor and a Participating Health Care Organization to use the VHIE to access Data for a Permitted Use. State’s health care provider staff are Authorized Users.
- (b) “Data” means the patient record data elements including all written or electronic patient information relating to patient identity, medical history, diagnosis, treatment, tests or prognosis which is accessible to a Participating Health Care Organization in the VHIE. Such information may include, but not be limited to, admission, discharge, transfer, medical, prescription, billing, and/or other data.
- (c) “Data Services” means access to Data for Vermont Medicaid beneficiaries through VITLAccess, which is a secure internet portal allowing State health care provider staff to view patient data from other health care organizations through the VHIE.
- (d) “Data Subcontractor” means the vendor(s) with whom Contractor has subcontracted as its Business Associate(s) pursuant to the terms of this Contract to assist it in meeting its obligations under this Exhibit 1 and as the operator of the VHIE. Contractor shall obtain adequate written assurances from any Data Subcontractor that it will comply with all applicable laws, including but not limited to the HIPAA Privacy and Security Regulations.
- (e) “Documentation” means user and administrator manuals and guides for the scope and use of Data Services that are available from Contractor, including on its website (www.vitl.net) and include Policies and Procedures, as such terms are defined in Section 3.
- (f) “HIPAA Privacy and Security Regulations” means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164 and the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Parts 160 and 164.
- (g) “Participating Health Care Organization” means an individual hospital, medical practice, physician practice, home health care agency or other health care provider who has entered into a VHIE Services Agreement with Contractor or a substantially similar agreement, agreeing to participate in the exchange of Data on the VHIE.
- (h) “Patient” means an individual who has received or will receive treatment or health care services from a Participating Health Care Organization.
- (i) “Permitted Use” means the use of any Data available on the VHIE only for the purposes of treatment,

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payment or health care operations by the State's health care provider staff or a Participating Health Care Organization as permitted under State and federal law and the Policies and Procedures of VITL. "Permitted Use" includes query-based access by other national exchanges for permitted purposes as defined by the Restatement II of the Data Use and Reciprocal Support Agreement ("DURSA"), April 13, 2019. "Permitted Use" may include the use of Data available on the VHIE for public health purposes with public health authorities to the extent that access is authorized under applicable law.

- (j) "Project Charter" means a document agreed to by Contractor and the State which includes, among other things, a plan of implementation for Data Services.
- (k) "Protected Health Information" and the abbreviation "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to the individually identifiable health information created or received by a Business Associate from or on behalf of a Participating Health Care Organization. Such term shall also include Electronic Protected Health Information.
- (l) "Quality Review" shall mean the review of Data for the purpose of disease management, utilization review or quality assessment or improvement. Utilization review includes precertification and preauthorization of services, and concurrent and retrospective review of services. It does not include post-payment audits of services rendered.
- (m) "Treatment" shall have the definition assigned to it by the HIPAA Privacy and Security Regulations at 45 C.F.R. § 164.501, namely the provision, coordination, or management of health care and related services by one or more health care providers, including but not limited to, services for the diagnosis, prevention, cure or relief of a health care injury or disease. It may also include the coordination or management of health care by a health care provider with a third party, consultation between health care providers relating to a patient, or the referral of a patient for health care from one health care provider to another.
- (n) "Vermont Health Information Exchange" or "VHIE" means the Vermont Health Information Exchange, an integrated electronic health information infrastructure for the sharing of PHI and Data among Participating Health Care Organizations and the State's health care provider staff.

Section 2 – Contractor's Role and the Vermont Health Information Exchange

- (a) Contractor and the State shall cooperate to develop the Project Charter and perform the implementation activities described therein as soon as reasonably practicable following the effectiveness of this Exhibit 1.
- (b) Contractor shall manage and administer the VHIE and provide Data Services to the State as described in this Exhibit 1 and in compliance with applicable laws and regulations. Contractor may delegate responsibilities related to its role to one or more Data Subcontractors so long as Contractor and such Data Subcontractors are Business Associates.
- (c) Contractor will make the VHIE available only for a Permitted Use as defined in Section 1 (i).
- (d) Contractor will make commercially reasonable efforts to make the VHIE available to the State twenty-four (24) hours a day, seven (7) days a week; however, the VHIE's availability may be suspended for maintenance or unscheduled interruptions. Contractor will use commercially reasonable efforts to provide the State with reasonable advance notice of any suspension or interruption of the VHIE's availability and to restore the VHIE's availability.

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Section 3 – Policies and Procedures of the Vermont Health Information Exchange

Contractor will establish policies and procedures, including but not limited to policies covering patient consent and use of Data (respectively, “Policies” and “Procedures”) that will govern Contractor’s and Participating Health Care Organizations’ activity on the VHIE, and these Policies and Procedures are available at Contractor’s website (www.vitl.net). These Policies and Procedures govern use of the VHIE and Data provided to and available on the VHIE. The State’s use of the VHIE constitutes acceptance of those Policies and Procedures. No Policy or Procedure shall allow any use of Data for any purpose other than a Permitted Use. Contractor may provide access to Data in the VHIE for the services related to Permitted Use, and may provide access to such Data for Quality Review consistent with its Policy on Secondary Use of PHI on the VHIE which provides for use by Accountable Care Organizations or Health Plans for Quality Review under a Data Use Agreement.

(a) Changes to Policies and Procedures. Contractor may change or amend the Policies and Procedures from time to time at its discretion and will post notice of final changes at Contractor’s website (www.vitl.net). Contractor shall provide the State and Participating Health Care Organizations notice of such changes to Policies and Procedures by electronic mail or other electronic notification such as by posting such notice on its website. Any changes will be effective sixty (60) days following adoption by Contractor, unless Contractor determines that an earlier effective date is required to address a legal requirement, a concern relating to the privacy or security of Data or an emergency situation. Except as expressly provided herein, Participating Health Care Organizations will have no ownership or other property rights in the Policies and Procedures or other materials or services provided by Contractor.

Section 4 – State’s Role and the Vermont Health Information Exchange

(a) The State, solely through its health care provider staff, may access and receive Data in accordance with the terms of this Exhibit 1 and the Documentation incorporated herein.

(b) The State agrees that it shall be responsible for all costs charged by its vendors, internet service providers or telecommunications providers in connection with connecting its computer network to the VHIE.

Section 5 – Ownership of Exchange Equipment and Rights

(a) Any equipment or communication lines supplied by the State shall remain the sole property of the State. Equipment, software, intellectual property, or communication lines owned by Contractor shall remain the sole property of Contractor.

(b) Contractor grants to the State a non-exclusive, nontransferable, non-sublicensable license to access and use the Data and to use the software comprising the VHIE system solely for Permitted Uses and subject to the other limitations described in this Exhibit 1. Neither party, nor any of their respective employees, agents, affiliates or subcontractors, will acquire any rights to any intellectual property, software, information or other materials owned by the other party (or any employee, agent, affiliate or subcontractor thereof) prior to the effectiveness of this Exhibit 1 unless expressly agreed otherwise.

Section 6 – Medical Judgment Required

The State acknowledges that neither Contractor nor the VHIE provides Treatment or makes clinical, medical, or other similar decisions, and that participation in the VHIE is not a substitute for competent, properly trained and knowledgeable staff who bring professional judgment and analysis to the Data provided through the VHIE. Each party further acknowledges that, as between Contractor and its Data

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Subcontractors on the one hand and the State and its subcontractors on the other, the State is solely responsible for verifying the accuracy of all Data and determining the data necessary for its health care provider staff to make Treatment decisions, as well as complying with all laws, regulations, licensing requirements applicable to its delivery of health care services.

Section 7 – Disclaimer of Warranties

EACH PARTY ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY PROVIDED IN THIS EXHIBIT OR THE CONTRACT TO WHICH IT RELATES, NO WARRANTIES HAVE BEEN MADE BY ANY OTHER PARTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE DATA SERVICES DESCRIBED AND DELIVERED HEREUNDER OR WITH RESPECT TO CLINICAL DATA, INFORMATION, OR THE VHIE.

Section 8 – No Fees

Data Services shall be provided by Contractor to the State under this Exhibit 1 at no cost.

Section 9 – Single Sign On Access

(a) VITL offers Single Sign On Access and the State seeks to establish Single Sign On functionality between its electronic health record network and the VHIE in order to facilitate the treatment of patients. VITL is willing to provide Single Sign On Access to the State during the term of the Agreement, so long as the State agrees to meet certain requirements (1) for training its end users, (2) for monitoring all VHIE access by its end users consistent with VITL's Policies and Procedures and (3) for auditing use.

(b) VITL agrees to provide the State Single Sign On access to the VHIE during the term of the Agreement. The State agrees that Single Sign On access to the VHIE shall only be granted to end users ("Single Sign On End Users") for purposes related to the diagnosis and treatment, payment for treatment or necessary health care operations related to that treatment of the State's patients.

(c) The State agrees that it will provide orientation and regular training to each of its designated Single Sign On End Users who may use the Single Sign On functionality on the terms and conditions which apply to the State's access to Protected Health Information on the VHIE which includes the following:

(1) that access to the Protected Health Information is restricted to individuals for whom the Single Sign On End User is, or will be, involved in their diagnosis and treatment, payment for this treatment or necessary health care operations related to such treatment;

(2) that access to the VHIE is not allowed for:

- (i) the Single Sign On End User to access his or her own medical record or the medical records of family members;
- (ii) education purposes; or
- (iii) research purposes.

(3) the confidentiality requirements for Protected Health Information accessed from the VHIE under the VHIE Patient Consent Policy and all other VHIE Policies and Procedures, as well as under state and federal law, including the HIPAA Privacy and Security Regulations;

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(4) privacy and security compliance procedures, including safeguarding passwords and related measures; and

(5) that all Single Sign On End User access is subject to periodic compliance audits at any time conducted by the State and/or VITL.

The State agrees to provide a record of orientation and training of any VHIE Single Sign On end user upon request by VITL.

(d) The State is responsible for the compliance of its designated Single Sign On End Users with the VHIE Policies and Procedures and federal and state privacy and security law, notwithstanding its fulfilling the orientation and training requirements as set forth in paragraph (c) of this Section.

(e) The State agrees to regularly monitor and audit the use and appropriateness of its VHIE Single Sign On End Users' access to the VHIE and agrees to discipline, including to terminate the access of, any VHIE Single Sign On End User in the event that it determines that such user has violated any State or VHIE Policies or Procedures related to VHIE access, and to promptly, and within forty-eight (48) hours, notify VITL of the termination and circumstances involved. The State agrees to fully cooperate with and assist VITL in investigating any potential breach activity and in making all notifications and taking steps to mitigate any harm.

(f) Either VITL or the State may terminate the State's Single Sign On Access contemplated by this Section: (i) without cause upon no less than 90 days' prior written notice of termination to the other party; or (ii) for cause at any time for material failure of the other party to comply with the terms and conditions hereof, if such material failure is not corrected within a period of thirty (30) days after receipt of written notice from the other party specifying such failure or, in the event that such material failure cannot be cured within such period, commence and pursue diligent efforts to cure within such time period.

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ATTACHMENT B – PAYMENT PROVISIONS

The maximum dollar amount payable under this Contract is not intended as any form of a guaranteed amount. Contractor shall be paid for services actually delivered or performed as specified in Attachment A, up to the maximum allowable amount specified on page one of this Contract.

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
 - a. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this Contract; and
 - b. a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 15** days from the date State receives an error-free invoice with all necessary and complete supporting documentation.
3. Contractor shall submit detailed invoices, which shall include an invoice number, date of submission, dates of service, the Contract number, descriptions of services and deliverables performed, evidence of deliverable approval by the State, total amount billed broken down into work packages by project and shall be signed by an authorized representative of Contractor. Contractor shall not submit an invoice for any deliverable under this Contract until it has received written notice of acceptance of the deliverable by the State in the form of a DAD.
4. If a deliverable is not accepted by the State, which shall not be unreasonably refused, the State shall not release payment. Contractor has ten (10) business days to acknowledge the rejection of the deliverable and present a timeline for revision to resubmit the deliverable. If the schedule is not adhered to, then payment is foregone.
5. Contractor shall submit invoices to the State in accordance with the schedule set forth in this Attachment B. Unless a more particular schedule is provided herein, invoices shall be submitted not more frequently than monthly.
6. Invoices and any required reports shall be submitted to the State electronically at the following address: AHS.DVHAInvoices@vermont.gov
7. **EXPENSES:** The fee for services shall be inclusive of Contractor expenses.
8. Contractor shall not invoice for travel time.
9. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are as follows:

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Table 1.1: Payment Provisions – Operations

Medicaid Outcome Measures	Outcomes Metrics and System Requirements	Maximum Payable Amount
Direct Care / Care Coordination		
Outcome 1: Improve Medicaid providers' ability to effectively treat and coordinate care for Medicaid beneficiaries by creating one health record for every Vermonter accessible to treating providers and care coordinators.	3.1.v(a) Operate the VHIE Services Modules to ensure they are operational seven (7) days a week and 24 hours a day with at least a 94% average monthly uptime. This infrastructure includes the Master Patient Index Tool, Integration Engine, Terminology Service, Provider Portal, Direct Secure Messaging and Transactional Warehouse.	
	3.1.v(b) Provide the State with Contractor's downtime notification policy detailing the notification procedures in the case of downtime of any of Contractor's services provided under this Contract on an annual basis. The policy shall describe which customers are notified after what period of downtime, and which services apply to this policy.	
	3.1.v(c) Report unplanned downtime periods exceeding two (2) hours in duration of the VHIE, VITLAccess, VITLDirect, direct connection to State systems, or other data exchange services to the State Program Manager at the time of VHIE client notification. Contractor shall notify clients of planned downtime activities that impact use of the VHIE.	
	3.1.v(d) Operate disaster recovery capabilities for Rhapsody and TermAtlas, as defined in the Disaster Recovery Plan provided by CI to the Contractor and approved by the State, to recover from unplanned downtime events in the VHIE production infrastructures.	
Outcome 2: Enable longitudinal, population-based evaluation of Medicaid patients to optimize Medicaid services and care delivery.	3.1.v(e) Operate the technology that allows authorized health care providers, with patient consent, the ability to obtain Medication History through VITLAccess as provided by Contractor's Medication History vendor. Contractor shall maintain consent management technical and operational infrastructure to support the State's consent protocols for access to data on the VHIE. Contractor shall also support patient education about consent choices by making resources available to health care organizations and directly to patients.	
	3.1.v(f) Maintain consent management technical and operational infrastructure	
	3.1.v(g) Maintain network to network data exchange service implementations from EHRs such as eHealth Exchange initiator and responder capability, which is also called Cross Community Access.	
	3.1.i.v(h) Report on health records made available to treating providers through the VHIE demonstrated by number of VITLAccess users, number of HCOs using VITLAccess divided by the number of potential HCOs who could use VITLAccess, number of patient queries through VITLAccess.	
		\$906,118.00
		\$735,008.00

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	3.1.v.(i) Utilize the VHIE Technical Support Services Team to support client and client EHR vendor issues related to maintaining connections to the VHIE and its supporting infrastructure and respond to all client technical support inquiries within 2 business days.	
	3.1.v.(j) Maintain the levels of performance (including, but not limited to, a User Directory to maintain roles and privileges), availability, and Security for the VITLAccess web-based service as defined in the correlating DED.	
	3.1.v.(k) Provide on-demand training or support resources to help VITLAccess users learn how to use the portal, including but not limited to resources that will be accessible in emergency situations where time to train is limited and quick, task-oriented how-to's are needed. Provide a list of live trainings performed for emergency healthcare response/preparedness organizations to introduce organizations and staff to how to use VITLAccess.	\$141,510.00
	3.1.v.(l) Report the number of Medicaid patient records transmitted from the VHIE to the Medicaid care coordination tool shows how the VHIE data system can provide data which enables care coordination efforts for Medicaid beneficiaries.	\$248,309.00
	3.1.v.(m) Report on number of audits of accessed data, and requests for records from individuals including format in which records are transmitted. Provide information about patient education activities related to Vermont's consent to share health data via the VHIE policy.	\$325,770.00
Outcome 3: Improve Medicaid providers' ability to effectively treat and coordinate care for Medicaid beneficiaries by alerting providers to admissions, discharges, and transfers of their patients.	3.1.v.(n) Report on number of ADT messages sent to event notification services.	\$209,503.00
	3.1.v.(o) For Medicaid beneficiaries, maintain an identity matching rate of at least 90% (i.e., Medicaid Match Rate)	
	3.1.v.(p) Operate and maintain the Verato Master Person Index including work with the contributing organizations and their vendors to address any issues related to identity management and person records.	
Outcome 4: Improve Medicaid providers' ability to effectively treat and coordinate care for Medicaid beneficiaries by delivering laboratory, radiological, and transcribed reports through the VHIE.	3.1.v.(q) Operate and maintain a Terminology Services (TS) engine. For this Contract Term, Contractor shall continue to operate and maintain the TS engine to standardize local codes and unmapped data elements in HL7 Version 2 (ADT, Lab, Rad, Trans, VXU), HL7 Version 3 (CCD) message types, and FHIR Resources.	\$152,961.00
	3.1.v.(r) Report on number of LAB, RAD, TRANS messages captured by the VHIE and made available to health care organizations through VHIE.	

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Public Health		
<p>Outcome 5: Enhance public health management of the Medicaid population (and general population) by automating capture and exchange of public health data through the VHIE system.</p> <p>Outcome 6: Support response to epidemic monitoring and emergency response by capturing and making available related data for the state's Public Health Authority</p>	3.2.iii(a) Transport and validate Laboratory HL7 messages, or other message types as approved by the VDH, in accordance with the National Institute for Standards and Technology (NIST) Electronic Laboratory Reporting requirements, or VDH minimum requirements for other message types, and deliver messages to the VDH Rhapsody engine for ingestion into the National Electronic Disease Surveillance System (NEDSS) Base System (NBS).	
	3.2.iii(b) Report on LAB messages captured in the VHIE and transmitted to the Public Health Authority, and the percent of total death records transmitted from the Death Registry that are integrated to the VHIE.	
	3.2.iii(c) Transport and validate immunization HL7 messages, or other message types as approved by the Vermont Department of Health (VDH), in accordance with the Center for Disease Control (CDC) Immunization Implementation Guide, as modified by the VDH Immunization Implementation Guide, and deliver messages to the VDH Immunization Registry. Provide a list of immunization validations implemented specific to meeting the VDH Immunization HL7 Implementation Guide annually, or if updated, and provide a VXU Immunization errors line chart to show the number of errors reported each month over time.	
	3.4. Qualified DVHA and VDH personnel shall have access to the VHIE through its provider portal, VITLAccess, in accordance with the terms and conditions set forth in Exhibit I to this Attachment A.	\$547,247.00
	3.2.iii(d) Work with designated representatives from the State to develop a strategy to better integrate VHIE and Vermont Department of Health infrastructure and capabilities	
	3.2.iii(e) Continue to support hospitalization reporting to support the COVID-19 response effort, as previously defined.	
	3.2.iii(f) Work with the Vermont Department of Health to produce a plan for evaluating race and ethnicity data discrepancies.	
	3.2.iii(g) Test the health disparities data evaluation process in accordance with the produced plan.	\$300,000.00
Medicaid Operations Support		
Outcome 7: Availability of the HIE system to positively impact health policy priorities.	3.3.ii(a) Contractor shall leverage the newly implemented Collaborative Services platform to support Medicaid services, including but not limited to, data reporting for the Blueprint for Health Program producing the Blueprint VCR extract based on the Blueprint specified priority one data elements for the initial extract at a minimum, and with a continuing cadence as determined through the DED process.	
	3.3.ii(b) Contractor shall continue to manage the subscription process for the hosting service at Knack for the Blueprint Portal, as required by the Blueprint team. The Blueprint portal includes an interface for sharing	\$976,242.00

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	Blueprint practice and connectivity data with VITL for the purpose of facilitating any future data quality work conducted with Blueprint practices.	
	3.3.ii(c) Maintain Medicaid claims data connection in accordance with standards set in VHIE Connectivity Criteria and transmission requirements as directed by Vermont Medicaid.	\$585,868.00
Security		
Maintain VHIE system security in service of meeting the HIE goals and outcomes of the Medicaid program and health system	4.3 NIST-CSF Compliant Reports	\$1,067,840.00
VHIE Maintenance & Operations Annual Total		\$6,196,376.00

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Table 1.2: Payment Provisions – DDI

Project	Deliverable Detail	Payment Cycle	Amount Per Deliverable	Maximum Payable Amount
5. Connecting Patients, Providers & Other Users to Health Data	5.i. Implement a minimum of 50 interface connections as specified	Upon completion, no later than 12/31/22	\$7,500.00 each for a maximum of \$375,735.00	\$1,144,735
	5.ii VHIE Results Delivery procurement strategy, RFP and summary of responses	Upon completion, no later than 12/31/22	\$62,000.00	
	5.iii Implement a new VHIE Results Delivery solution.	Upon completion, no later than 12/31/22	\$62,000.00	
	5.iv eHealth Exchange Hub cutover plan	Upon completion, no later than 12/31/22	\$50,000.00	
	5.v Implementation and testing of VHIE connection to eHealth Exchange Hub	Upon completion, no later than 12/31/22	\$50,000.00	
	5.vi User education and training resources to support the launch of a new provider portal	Upon completion, no later than 12/31/22	\$95,000.00	
	5.vii List of live organizations transitioned for use of the new portal	Upon completion, no later than 12/31/22	\$20,000.00 each connection for a maximum of \$350,000.00	
	5.viii Demonstration of enhanced provider portal functionality: prescription fill history	Upon completion, no later than 12/31/22	\$75,000.00	
	5.ix Demonstration of eHealth Exchange querying live in provider portal		\$25,000.00	
6. Final Implementation of the VHIE Unified Health Data Architecture	6.i Test plan for the Data Repository upgrade from FHIR R3 to R4	Upon completion, no later than 12/31/22	\$120,000.00	\$950,299.00
	6.ii. Attest to the application of standard FHIR R4 release for clinical resources	Upon completion, no later than 12/31/22	\$75,000.00	

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Project	Deliverable Detail	Payment Cycle	Amount Per Deliverable	Maximum Payable Amount
	6.iii Attest to the application of standard FHIR R4 release for claims resources	Upon completion, no later than 12/31/22	\$70,299.00	
	6.iv.Design for use of State's Mulesoft/Okta infrastructure for development of API(s)	Upon completion, no later than 12/31/22	\$40,000.00	
	6.v. Attest to the completion of Patient API testing.	Upon completion, no later than 12/31/22	\$40,000.00	
	6.vi Provide technical specifications for access and use of Patient API and attestation of live API functionality	Upon completion, no later than 12/31/22	\$30,000.00	
	6.vii Plan for defining and prioritizing user API needs.	Upon completion, no later than 12/31/22	\$30,000.00	
	6.viii Education materials for patient facing education on use of the API to access patient health data.	Upon completion, no later than 12/31/22	\$25,000.00	
	6.ix Technical documentation for third-party API users, including but not limited to security and deployment protocols.	Upon completion, no later than 12/31/22	\$20,000.00	
	6.x Maintain legacy operations to ensure complete transition from legacy systems to current operating systems; required costs to be approved in advance through proposal delivered by Contractor to State no later than June 30, 2022	Upon approval, no later than 12/31/22	\$500,000.00	

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Project	Deliverable Detail	Payment Cycle	Amount Per Deliverable	Maximum Payable Amount
7. Leveraging the Unified Technical Architecture to Support and Enhance Public Health Efforts	7.i. Design an approach to integrating the State's Immunization Registry (IMR) with the VHIE, utilizing the State's MuleSoft and Okta solutions.	Upon completion	\$50,000.00	\$80,000.00
	7.ii. Execute deliverables as approved in the designed approach to IMR and VHIE integration.	Upon completion	\$30,000.00	
8. Enhancing Medicaid Operations with Health Data and Data Services available through the VHIE	Specifications of delivery will be articulated in this contract, which will be augmented through the Specifications Order process as noted in Section 11.	Upon completion	\$300,000.00	\$300,000.00

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Project	Deliverable Detail	Payment Cycle	Amount Per Deliverable	Maximum Payable Amount
9. Streamlining HIE Architecture and adding data types	9.i To enhance reporting infrastructure, design and develop implementation strategy of data architecture for data tables, data elements, indices, referential integrity, reporting data model, and access points.	Upon Completion	\$200,000.00	\$578,000.00
	9.ii Develop a stakeholder engagement plan for documenting current and future VHIE reporting needs.	Upon Completion	\$54,000.00	
	9.iii Execute implementation activities to occur in 2022 as directed by approved reporting infrastructure implementation strategy.	Upon Completion	\$254,000.00	
	9.iv Continue the coordination of the Part II+ Group of the Health Information Exchange Steering Committee as described in the State's Health Information Technology (Exchange) Strategic Plan.	Upon Completion	\$10,000.00	
	9.v Continue the coordination of a program of education for mental health and substance use disorder treatment organizations, including but not limited to Vermont's Designated Agencies, focused on VHIE capabilities and potential uses of the VITLAccess provider portal.	Upon Completion	\$10,000.00	

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Project	Deliverable Detail	Payment Cycle	Amount Per Deliverable	Maximum Payable Amount
	9.vi Develop requirements specifications for ingesting social determinants of health data onto the VHIE with consideration for standards set by the USCDI and the Gravity Project.	Upon Completion	\$30,000.00	
	9.vii Design an implementation approach for ingestion of social determinants of health data, due no later than August 2022, and begin implementation as approved by State.	Upon Completion	\$20,000.00	
DDI Specification Order Budget Year 1				\$50,000.00
DDI Specification Order Budget Year 2				\$50,000.00
Total DDI Amount				3,153,034.00

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ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED DECEMBER 15, 2017

1. Definitions: For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific contract or grant to which this form is attached.

2. Entire Agreement: This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

4. Sovereign Immunity: The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.

5. No Employee Benefits For Party: The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. Independence: The Party will act in an independent capacity and not as officers or employees of the State.

7. Defense and Indemnity: The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

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Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior notice to the State.

9. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's

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fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

12. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the United States, except with the express written permission of the State.

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

15. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

16. Taxes Due to the State:

- A.** Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B.** Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C.** Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D.** Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

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17. Taxation of Purchases: All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

20. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

23. Conflict of Interest: Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

24. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

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25. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) (“Force Majeure”). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

26. Marketing: Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

27. Termination:

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party’s notice or such longer time as the non-breaching party may specify in the notice.
- C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

28. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

29. No Implied Waiver of Remedies: Either party’s delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

30. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party’s performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an “AS IS, WHERE IS” basis, with no warranties whatsoever.

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

- A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with

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OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party’s employee’s rights with respect to unionization.
- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

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ATTACHMENT D
INFORMATION TECHNOLOGY SYSTEM IMPLEMENTATION
TERMS AND CONDITIONS (rev. 3/08/19)

1. MODIFICATIONS TO CONTRACTOR DOCUMENTS

The parties specifically agree that the Contractor Documents are hereby modified and superseded by Attachment C and this Attachment D.

“Contractor Documents” shall mean one or more document, agreement or other instrument required by Contractor in connection with the performance of the products and services being purchased by the State, regardless of format, including the license agreement, end user license agreement or similar document, any hyperlinks to documents contained in the Contractor Documents, agreement or other instrument and any other paper or “shrinkwrap,” “clickwrap,” “browsewrap” or other electronic version thereof.

2. NO SUBSEQUENT, UNILATERAL MODIFICATION OF TERMS BY CONTRACTOR

Notwithstanding any other provision or other unilateral license terms which may be issued by Contractor during the Term of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for the products and services being purchased by the State, as applicable, the components of which are licensed under the Contractor Documents, or the fact that such other agreement may be affixed to or accompany the products and services being purchased by the State, as applicable, upon delivery, the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder.

3. TERM OF CONTRACTOR'S DOCUMENTS; PAYMENT TERMS

Contractor acknowledges and agrees that, to the extent a Contractor Document provides for alternate term or termination provisions, including automatic renewals, such sections shall be waived and shall have no force and effect. All Contractor Documents shall run concurrently with the term of this Contract; provided, however, to the extent the State has purchased a perpetual license to use the Contractor's software, hardware or other services, such license shall remain in place unless expressly terminated in accordance with the terms of this Contract. Contractor acknowledges and agrees that, to the extent a Contractor Document provides for payment terms which differ from the payment terms set forth in Attachment B, such sections shall be waived and shall have no force and effect and the terms in Attachment B shall govern.

4. OWNERSHIP AND LICENSE IN DELIVERABLES

4.1 Contractor Intellectual Property. Contractor shall retain all right, title and interest in and to any work, ideas, inventions, discoveries, tools, methodology, computer programs, processes and improvements and any other intellectual property, tangible or intangible, that has been created by Contractor prior to entering into this Contract (“Contractor Intellectual Property”). Should the State require a license for the use of Contractor Intellectual Property in connection with the development or use of the items that Contractor is required to deliver to the State under this Contract, including Work Product (“Deliverables”), the Contractor shall grant the State a royalty-free license for such development and use. For the avoidance of doubt, Work Product shall not be deemed to include Contractor Intellectual Property, provided the State shall be granted an irrevocable, perpetual, non-exclusive royalty-free license to use any such Contractor Intellectual Property that is incorporated into Work Product.

4.2 State Intellectual Property. The State shall retain all right, title and interest in and to (i) all content and all property, data and information furnished by or on behalf of the State or any agency, commission or board thereof, and to all information that is created under this Contract, including, but not limited to, all data that is generated under this Contract as a result of the use by Contractor, the State or any third party of any technology systems or knowledge bases that are developed for the State and used by Contractor hereunder, and all other rights,

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tangible or intangible; and (ii) all State trademarks, trade names, logos and other State identifiers, Internet uniform resource locators, State user name or names, Internet addresses and e-mail addresses obtained or developed pursuant to this Contract (collectively, “State Intellectual Property”).

Contractor may not use State Intellectual Property for any purpose other than as specified in this Contract. Upon expiration or termination of this Contract, Contractor shall return or destroy all State Intellectual Property and all copies thereof, and Contractor shall have no further right or license to such State Intellectual Property.

Contractor acquires no rights or licenses, including, without limitation, intellectual property rights or licenses, to use State Intellectual Property for its own purposes. In no event shall the Contractor claim any security interest in State Intellectual Property.

4.3 Work Product. All Work Product shall belong exclusively to the State, with the State having the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name and/or for its own benefit, all patents and copyrights, and all applications and registrations, renewals and continuations thereof and/or any and all other appropriate protection. To the extent exclusive title and/or complete and exclusive ownership rights in and to any Work Product may not originally vest in the State by operation of law or otherwise as contemplated hereunder, Contractor shall immediately upon request, unconditionally and irrevocably assign, transfer and convey to the State all right, title and interest therein.

“Work Product” means any tangible or intangible ideas, inventions, improvements, modifications, discoveries, development, customization, configuration, methodologies or processes, designs, models, drawings, photographs, reports, formulas, algorithms, patterns, devices, compilations, databases, computer programs, work of authorship, specifications, operating instructions, procedures manuals or other documentation, technique, know-how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection), that is specifically made, conceived, discovered or reduced to practice by Contractor, either solely or jointly with others, pursuant to this Contract. Work Product does not include Contractor Intellectual Property or third party intellectual property.

To the extent delivered under this Contract, upon full payment to Contractor in accordance with Attachment B, and subject to the terms and conditions contained herein, Contractor hereby (i) assigns to State all rights in and to all Deliverables, except to the extent they include any Contractor Intellectual Property; and (ii) grants to State a perpetual, non-exclusive, irrevocable, royalty-free license to use for State’s internal business purposes, any Contractor Intellectual Property included in the Deliverables in connection with its use of the Deliverables and, subject to the State’s obligations with respect to Confidential Information, authorize others to do the same on the State’s behalf. Except for the foregoing license grant, Contractor or its licensors retain all rights in and to all Contractor Intellectual Property.

The Contractor shall not sell or copyright a Deliverable without explicit permission from the State.

If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor Intellectual Property or Contractor Intellectual Property developed outside of this Contract with no assistance from State.

5. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING

5.1 For purposes of this Contract, confidential information will not include information or material which (a) enters the public domain (other than as a result of a breach of this Contract); (b) was in the receiving party’s possession prior to its receipt from the disclosing party; (c) is independently developed by the receiving party without the

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use of confidential information; (d) is obtained by the receiving party from a third party under no obligation of confidentiality to the disclosing party; or (e) is not exempt from disclosure under applicable State law.

- 5.2 **Confidentiality of Contractor Information.** The Contractor acknowledges and agrees that this Contract and any and all Contractor information obtained by the State in connection with this Contract are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. The State will not disclose information for which a reasonable claim of exemption can be made pursuant to 1 V.S.A. § 317(c), including, but not limited to, trade secrets, proprietary information or financial information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to the Contractor, and which gives the Contractor an opportunity to obtain business advantage over competitors who do not know it or use it.

The State shall immediately notify Contractor of any request made under the Access to Public Records Act, or any request or demand by any court, governmental agency or other person asserting a demand or request for Contractor information. Contractor may, in its discretion, seek an appropriate protective order, or otherwise defend any right it may have to maintain the confidentiality of such information under applicable State law within three business days of the State's receipt of any such request. Contractor agrees that it will not make any claim against the State if the State makes available to the public any information in accordance with the Access to Public Records Act or in response to a binding order from a court or governmental body or agency compelling its production. Contractor shall indemnify the State for any costs or expenses incurred by the State, including, but not limited to, attorneys' fees awarded in accordance with 1 V.S.A. § 320, in connection with any action brought in connection with Contractor's attempts to prevent or unreasonably delay public disclosure of Contractor's information if a final decision of a court of competent jurisdiction determines that the State improperly withheld such information and that the improper withholding was based on Contractor's attempts to prevent public disclosure of Contractor's information.

The State agrees that (a) it will use the Contractor information only as may be necessary in the course of performing duties, receiving services or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of Contractor information as it provides to protect its own similar confidential and proprietary information; (c) except as required by the Access to Records Act, it will not disclose such information orally or in writing to any third party unless that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the Contractor's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity.

Contractor may affix an appropriate legend to Contractor information that is provided under this Contract to reflect the Contractor's determination that any such information is a trade secret, proprietary information or financial information at time of delivery or disclosure.

- 5.3 **Confidentiality of State Information.** In performance of this Contract, and any exhibit or schedule hereunder, the Contractor acknowledges that certain State Data (as defined below), to which the Contractor may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law or otherwise exempt from disclosure under the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. ("State Data"). In addition to the provisions of this Section, the Contractor shall comply with the requirements set forth in the State's HIPAA Business Associate Agreement attached to this Contract as Attachment E.

State Data shall not be stored, accessed from, or transferred to any location outside the United States, without the express written approval of the State.

Unless otherwise instructed by the State, Contractor agrees to keep confidential all State Data. The Contractor agrees that (a) it will use the State Data only as may be necessary in the course of performing duties or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of State Data as it provides to protect its own similar confidential and proprietary information; (c) it will not

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publish, reproduce, or otherwise divulge any State Data in whole or in part, in any manner or form orally or in writing to any third party unless it has received written approval from the State and that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the State's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Contractor will take reasonable measures as are necessary to restrict access to State Data in the Contractor's possession to only those employees on its staff who must have the information on a "need to know" basis. The Contractor shall not retain any State Data except to the extent required to perform the services under this Contract.

Contractor shall not access State user accounts or State Data, except in the course of data center operations, response to service or technical issues, as required by the express terms of this Contract, or at State's written request.

Contractor may not share State Data with its parent company or other affiliate without State's express written consent.

The Contractor shall promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for State Data to which the Contractor or any third party hosting service of the Contractor may have access, so that the State may seek an appropriate protective order.

6. SECURITY OF STATE INFORMATION

6.1 Security Standards. To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with State Data, the Contractor represents and warrants that it will provide a best practice, secure infrastructure for the VHIE and its supporting infrastructure through continuous process and procedural improvement consistent with a CSF that supports *NIST Special Publication 800-53* (version 4 or higher) and *Federal Information Processing Standards Publication 200* and designed to (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include, but not be limited to, encryption at rest and multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data shall not be altered or corrupted without the prior written consent of the State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

6.2 Security Breach Notice and Reporting. The Contractor shall have policies and procedures in place for the effective management of Security Breaches, as defined below, which shall be made available to the State upon request.

In addition to the requirements set forth in any applicable Business Associate Agreement as may be attached to this Contract, in the event of any actual security breach or reasonable belief of an actual security breach the Contractor either suffers or learns of that either compromises or could compromise State Data (a "Security Breach"), the Contractor shall notify the State within 24 hours of its discovery. Contractor shall immediately determine the nature and extent of the Security Breach, contain the incident by stopping the unauthorized

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practice, recover records, shut down the system that was breached, revoke access and/or correct weaknesses in physical security. Contractor shall report to the State: (i) the nature of the Security Breach; (ii) the State Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the State. Contractor shall analyze and document the incident and provide all notices required by applicable law.

In accordance with Section 9 V.S.A. §2435(b)(3), the Contractor shall notify the Office of the Attorney General, or, if applicable, Vermont Department of Financial Regulation (“DFR”), within fourteen (14) business days of the Contractor’s discovery of the Security Breach. The notice shall provide a preliminary description of the breach. The foregoing notice requirement shall be included in the subcontracts of any of Contractor’s subcontractors, affiliates or agents which may be “data collectors” hereunder.

The Contractor agrees to fully cooperate with the State and assume responsibility at its own expense for the following, to be determined in the sole discretion of the State: (i) notice to affected consumers if the State determines it to be appropriate under the circumstances of any particular Security Breach, in a form recommended by the AGO; and (ii) investigation and remediation associated with a Security Breach, including but not limited to, outside investigation, forensics, counsel, crisis management and credit monitoring, in the sole determination of the State.

The Contractor agrees to comply with all applicable laws, as such laws may be amended from time to time (including, but not limited to, Chapter 62 of Title 9 of the Vermont Statutes and all applicable State and federal laws, rules or regulations) that require notification in the event of unauthorized release of personally-identifiable information or other event requiring notification.

In addition to any other indemnification obligations in this Contract, the Contractor shall fully indemnify and save harmless the State from any costs, loss or damage to the State resulting from a Security Breach or the unauthorized disclosure of State Data by the Contractor, its officers, agents, employees, and subcontractors.

- 6.3 **Security Policies.** To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with State Data, the Contractor will have an information security policy that protects its systems and processes and media that may contain State Data from internal and external security threats and State Data from unauthorized disclosure, and will have provided a copy of such policy to the State. The Contractor shall provide the State with reasonable written notice of any material amendment or modification of such policies.
- 6.4 **Operations Security.** To the extent the Contractor or its subcontractors, affiliates or agents provide systems that process, transmit, and store State Data, the Contractor shall cause an SSAE 18 SOC 2 Type 2 audit report to be conducted annually. The audit results and the Contractor’s plan for addressing or resolution of the audit results shall be shared with the State within sixty (60) days of the Contractor’s receipt of the audit results. Further, on an annual basis, within 90 days of the end of the Contractor’s fiscal year, the Contractor shall transmit its annual audited financial statements to the State.
- 6.5 **Redundant Back-Up.** The Contractor shall maintain a fully redundant backup data center geographically separated from its main data center that maintains near realtime replication of State data from the main data center. The Contractor’s back-up policies shall be made available to the State upon request. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.
- 6.6 **Vulnerability Testing.** The Contractor shall run quarterly vulnerability assessments and promptly report results to the State. Contractor shall remediate all critical issues within 90 days, all medium issues within 120

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days and low issues within 180 days. Contractor shall obtain written State approval for any exceptions. Once remediation is complete, Contractor shall re-perform the test.

7. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

7.1 General Representations and Warranties. The Contractor represents, warrants and covenants that:

- (i) The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Contract and the execution, delivery and performance of this Contract by the Contractor has been duly authorized by the Contractor.
- (ii) There is no outstanding litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Contract.
- (iii) The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Contract.
- (iv) The Contractor (a) owns, or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the Deliverables as set forth in this Contract; (b) shall be responsible for and have full authority to license all proprietary and/or third party software modules, including algorithms and protocols, that Contractor incorporates into its product; and (c) none of the Deliverables or other materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.
- (v) The Contractor has adequate resources to fulfill its obligations under this Contract.
- (vi) Neither Contractor nor Contractor's subcontractors has past state or federal violations, convictions or suspensions relating to miscoding of employees in NCCI job codes for purposes of differentiating between independent contractors and employees.

7.2 Contractor's Performance Warranties. Contractor represents and warrants to the State that:

- (i) All Deliverables will be free from material errors and shall perform in accordance with the specifications therefor for a period of at least one year.
- (ii) Contractor will provide to the State commercially reasonable continuous and uninterrupted access to the Service, and will not interfere with the State's access to and use of the Service during the term of this Contract;
- (iii) The Service is compatible with and will operate successfully with any environment (including web browser and operating system) specified by the Contractor in its documentation;
- (iv) Each and all of the services shall be performed in a timely, diligent, professional and skillful manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment.
- (v) All Deliverables supplied by the Contractor to the State shall be transferred free and clear of any and all restrictions on the conditions of transfer, modification, licensing, sublicensing and free and clear of any and all liens, claims, mortgages, security interests, liabilities and encumbrances or any kind.
- (vi) Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any

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hardware, software, data or peripheral equipment of or utilized by the State. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any software delivered hereunder, Contractor will, upon State's request, provide a new or clean install of the software. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.

- (vii) To the extent Contractor resells commercial hardware or software it purchased from a third party, Contractor will, to the extent it is legally able to do so, pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth herein.

7.3 Limitation on Disclaimer. The express warranties set forth in this Contract shall be in lieu of all other warranties, express or implied.

7.4 Effect of Breach of Warranty. If, at any time during the term of this Contract, software or the results of Contractor's work fail to perform according to any warranty of Contractor under this Contract, the State shall promptly notify Contractor in writing of such alleged nonconformance, and Contractor shall, at its own expense and without limiting any other rights or remedies of the State hereunder, re-perform or replace any services that the State has determined to be unsatisfactory in its reasonable discretion. Alternatively, with State consent, the Contractor may refund of all amounts paid by State for the nonconforming deliverable or service

8. PROFESSIONAL LIABILITY AND CYBER LIABILITY INSURANCE COVERAGE

In addition to the insurance required in Attachment C to this Contract, before commencing work on this Contract and throughout the term of this Contract, Contractor agrees to procure and maintain (a) Technology Professional Liability insurance for any and all services performed under this Contract, with minimum third party coverage of \$2,000,000.00 per claim, \$4,000,000.00 aggregate; and (b) first party Breach Notification Coverage of not less than \$2,000,000.00.

Before commencing work on this Contract the Contractor must provide certificates of insurance to show that the foregoing minimum coverages are in effect.

With respect to the first party Breach Notification Coverage, Contractor shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Contract.

9. LIMITATION OF LIABILITY.

CONTRACTOR'S LIABILITY FOR DAMAGES TO THE STATE ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT SHALL NOT EXCEED TWO TIMES THE MAXIMUM AMOUNT PAYABLE UNDER THIS CONTRACT. LIMITS OF LIABILITY FOR STATE CLAIMS SHALL NOT APPLY TO STATE CLAIMS ARISING OUT OF: (A) CONTRACTOR'S OBLIGATION TO INDEMNIFY THE STATE; (B) CONTRACTOR'S CONFIDENTIALITY OBLIGATIONS TO THE STATE; (C) PERSONAL INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY; (D) CONTRACTOR'S GROSS NEGLIGENCE, FRAUD OR INTENTIONAL MISCONDUCT; OR (E) VIOLATIONS OF THE STATE OF VERMONT FRAUDULENT CLAIMS ACT. IN NO EVENT SHALL THIS LIMIT OF LIABILITY BE CONSTRUED TO LIMIT CONTRACTOR'S LIABILITY FOR THIRD PARTY CLAIMS AGAINST THE CONTRACTOR WHICH MAY ARISE OUT OF CONTRACTOR'S ACTS OR OMISSIONS IN THE PERFORMANCE OF THIS CONTRACT.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, DAMAGES WHICH ARE UNFORESEEABLE TO THE PARTIES AT THE TIME OF CONTRACTING, DAMAGES WHICH ARE NOT PROXIMATELY CAUSED BY A PARTY, SUCH AS LOSS OF ANTICIPATED BUSINESS, OR LOST PROFITS, INCOME, GOODWILL, OR REVENUE IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT.

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The provisions of this Section shall apply notwithstanding any other provisions of this Contract or any other agreement.

10. TRADE SECRET, PATENT AND COPYRIGHT INFRINGEMENT

The State shall not be deemed to waive any of its rights or remedies at law or in equity in the event of Contractor's trade secret, patent and/or copyright infringement.

11. REMEDIES FOR DEFAULT; NO WAIVER OF REMEDIES

In the event either party is in default under this Contract, the non-defaulting party may, at its option, pursue any or all of the remedies available to it under this Contract, including termination for cause, and at law or in equity.

No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by the other under this Contract shall impair any such right, power or remedy, or shall be construed as a waiver of any such right, power or remedy, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.

12. NO ASSUMPTION OF COSTS

Any requirement that the State defend or indemnify Contractor or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or license verification costs of Contractor, is hereby deleted from the Contractor Documents.

13. TERMINATION

Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to the State all State information, State Intellectual Property or State Data (including without limitation any Deliverables for which State has made payment in whole or in part) ("State Materials"), that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such State property is expressed or embodied at that time.

In the event the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the Contractor shall immediately return all State Materials to State control; including, but not limited to, making all necessary access to applicable remote systems available to the State for purposes of downloading all State Materials.

Contractor shall reasonably cooperate with other parties in connection with all services to be delivered under this Contract, including without limitation any successor provider to whom State Materials are to be transferred in connection with termination. Contractor shall assist the State in exporting and extracting the State Materials, in a format usable without the use of the Services and as agreed to by State, at no additional cost.

Any transition services requested by State involving additional knowledge transfer and support may be subject to a contract amendment for a fixed fee or at rates to be mutually agreed upon by the parties.

If the State determines in its sole discretion that a documented transition plan is necessary, then no later than sixty (60) days prior to termination, Contractor and the State shall mutually prepare a Transition Plan identifying transition services to be provided.

14. CONTRACTOR BANKRUPTCY.

Contractor acknowledges that if Contractor, as a debtor in possession, or a trustee in bankruptcy in a case under Section 365(n) of Title 11, United States Code (the "Bankruptcy Code"), rejects this Contract, the State may elect to retain its rights under this Contract as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the State to Contractor or the Bankruptcy Trustee, Contractor or such Bankruptcy Trustee shall not interfere

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with the rights of the State as provided in this Contract, including the right to obtain the State Intellectual Property.

15. SOFTWARE LICENSEE COMPLIANCE REPORT.

In lieu of any requirement that may be in a Contractor Document that the State provide the Contractor with access to its System for the purpose of determining State compliance with the terms of the Contractor Document, upon request and not more frequently than annually, the State will provide Contractor with a certified report concerning the State's use of any software licensed for State use pursuant this Contract. The parties agree that any non-compliance indicated by the report shall not constitute infringement of the licensor's intellectual property rights, and that settlement payment mutually agreeable to the parties shall be the exclusive remedy for any such non-compliance.

16. IRS TERMS IF FEDERAL TAX INFO WILL BE PROCESSED OR STORED (Per IRS Publication 1075)

To the extent Contractor's performance under this Contract involves the processing or storage of Federal tax information, then, pursuant to IRS Publication 1075, the following provisions shall apply in addition to any other security standard or requirements set forth in this Contract:

A. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by its employees with the following requirements:

1. All work will be done under the supervision of the Contractor or the Contractor's employees.
2. The Contractor and the Contractor's employees with access to or who use Federal tax information must meet the background check requirements defined in IRS Publication 1075.
3. Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
4. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
5. The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
6. Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the State or his or her designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the State or its designee with a statement containing the date of destruction, description of material destroyed, and the method used.
7. All computer systems processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
8. No work involving Federal tax information furnished under this Contract will be subcontracted without prior written approval of the IRS.

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9. The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.
10. The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

B. CRIMINAL/CIVIL SANCTIONS:

1. Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
2. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431, and set forth at 26 CFR 301.6103(n)-1.
3. Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
4. Prior to Contractor having access to Federal tax information, Contractor shall certify that each Contractor employee or other individual with access to or who use Federal tax information on Contractor's behalf pursuant to this Contract understands the State's security policy and procedures for safeguarding Federal tax information. Contractor's authorization to access Federal tax information hereunder shall be contingent upon annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification, and at least annually afterwards, Contractor will be advised of the provisions of IRCs 7431, 7213, and 7213A (see IRS Publication 1075 *Exhibit 4, Sanctions for Unauthorized Disclosure*, and *Exhibit 5, Civil Damages for Unauthorized Disclosure*). The training provided before the initial certification and annually thereafter must also cover the incident response policy

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and procedure for reporting unauthorized disclosures and data breaches (See Publication 1075, Section 10). For both the initial certification and the annual certification, the Contractor must sign a confidentiality statement certifying its understanding of the security requirements.

C. INSPECTION:

The IRS and the State, with 24 hours' notice, shall have the right to send its officers, employees, and inspectors into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Contract for compliance with the requirements defined in IRS Publication 1075. The IRS's right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology assets that access, store, process or transmit Federal tax information. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

17. SOV Cybersecurity Standard 19-01

All products and service provided to or for the use of the State under this Contract shall be in compliance with State of Vermont Cybersecurity Standard 19-01, which Contractor acknowledges has been provided to it, and is available on-line at the following URL:

<https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>

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ATTACHMENT E
BUSINESS ASSOCIATE AGREEMENT

SOV CONTRACTOR/GRANTEE/BUSINESS ASSOCIATE:
VERMONT INFORMATION TECHNOLOGY LEADERS, INC.

SOV CONTRACT NO. 43142 CONTRACT EFFECTIVE DATE: 1/1/2022

This Business Associate Agreement (“Agreement”) is entered into by and between the State of Vermont Agency of Human Services, operating by and through its **Department of Vermont Health Access** (“Covered Entity”) and Party identified in this Agreement as Contractor or Grantee above (“Business Associate”). This Agreement supplements and is made a part of the contract or grant (“Contract or Grant”) to which it is attached.

Covered Entity and Business Associate enter into this Agreement to comply with the standards promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 (“Privacy Rule”), and the Security Standards, at 45 CFR Parts 160 and 164 (“Security Rule”), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), and any associated federal rules and regulations.

The parties agree as follows:

1. Definitions. All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and associated federal rules and regulations. Terms defined in this Agreement are italicized. Unless otherwise specified, when used in this Agreement, defined terms used in the singular shall be understood if appropriate in their context to include the plural when applicable.

“*Agent*” means an *Individual* acting within the scope of the agency of the *Business Associate*, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c) and includes Workforce members and *Subcontractors*.

“*Breach*” means the acquisition, Access, Use or Disclosure of *Protected Health Information (PHI)* which compromises the Security or privacy of the *PHI*, except as excluded in the definition of *Breach* in 45 CFR § 164.402.

“*Business Associate*” shall have the meaning given for “Business Associate” in 45 CFR § 160.103 and means Contractor or Grantee and includes its Workforce, *Agents* and *Subcontractors*.

“*Electronic PHI*” shall mean *PHI* created, received, maintained or transmitted electronically in accordance with 45 CFR § 160.103.

“*Individual*” includes a Person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

“*Protected Health Information*” (“*PHI*”) shall have the meaning given in 45 CFR § 160.103, limited to the *PHI* created or received by *Business Associate* from or on behalf of Covered Entity.

“*Required by Law*” means a mandate contained in law that compels an entity to make a use or disclosure of *PHI* and that is enforceable in a court of law and shall have the meaning given in 45 CFR § 164.103.

“*Report*” means submissions required by this Agreement as provided in section 2.3.

“*Security Incident*” means the attempted or successful unauthorized Access, Use, Disclosure, modification, or destruction of Information or interference with system operations in an Information System relating to *PHI* in accordance with 45 CFR § 164.304.

“*Services*” includes all work performed by the *Business Associate* for or on behalf of Covered Entity that requires the Use and/or Disclosure of *PHI* to perform a *Business Associate* function described in 45 CFR § 160.103.

“*Subcontractor*” means a Person to whom *Business Associate* delegates a function, activity, or service, other than in

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the capacity of a member of the workforce of such *Business Associate*.

“*Successful Security Incident*” shall mean a *Security Incident* that results in the unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System.

“*Unsuccessful Security Incident*” shall mean a *Security Incident* such as routine occurrences that do not result in unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System, such as: (i) unsuccessful attempts to penetrate computer networks or services maintained by *Business Associate*; and (ii) immaterial incidents such as pings and other broadcast attacks on *Business Associate's* firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above with respect to *Business Associate's* Information System.

“*Targeted Unsuccessful Security Incident*” means an *Unsuccessful Security Incident* that appears to be an attempt to obtain unauthorized Access, Use, Disclosure, modification or destruction of the Covered Entity’s *Electronic PHI*.

2. Contact Information for Privacy and Security Officers and Reports.

2.1 *Business Associate* shall provide, within ten (10) days of the execution of this Agreement, written notice to the Contract or Grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer of the *Business Associate*. This information must be updated by *Business Associate* any time these contacts change.

2.2 Covered Entity’s HIPAA Privacy Officer and HIPAA Security Officer contact information is posted at: <https://humanservices.vermont.gov/rules-policies/health-insurance-portability-and-accountability-act-hipaa>

2.3 *Business Associate* shall submit all *Reports* required by this Agreement to the following email address: AHS.PrivacyAndSecurity@vermont.gov

3. Permitted and Required Uses/Disclosures of PHI.

3.1 Subject to the terms in this Agreement, *Business Associate* may Use or Disclose *PHI* to perform *Services*, as specified in the Contract or Grant. Such Uses and Disclosures are limited to the minimum necessary to provide the *Services*. *Business Associate* shall not Use or Disclose *PHI* in any manner that would constitute a violation of the Privacy Rule if Used or Disclosed by Covered Entity in that manner. *Business Associate* may not Use or Disclose *PHI* other than as permitted or required by this Agreement or as *Required by Law* and only in compliance with applicable laws and regulations.

3.2 *Business Associate* may make *PHI* available to its Workforce, *Agent* and *Subcontractor* who need Access to perform *Services* as permitted by this Agreement, provided that *Business Associate* makes them aware of the Use and Disclosure restrictions in this Agreement and binds them to comply with such restrictions.

3.3 *Business Associate* shall be directly liable under HIPAA for impermissible Uses and Disclosures of *PHI*.

4. Business Activities. *Business Associate* may Use *PHI* if necessary for *Business Associate's* proper management and administration or to carry out its legal responsibilities. *Business Associate* may Disclose *PHI* for *Business Associate's* proper management and administration or to carry out its legal responsibilities if a Disclosure is *Required by Law* or if *Business Associate* obtains reasonable written assurances via a written agreement from the Person to whom the information is to be Disclosed that such *PHI* shall remain confidential and be Used or further Disclosed only as *Required by Law* or for the purpose for which it was Disclosed to the Person, and the Agreement requires the Person to notify *Business Associate*, within five (5) business days, in writing of any *Breach* of Unsecured *PHI* of which it is aware. Such Uses and Disclosures of *PHI* must be of the minimum amount necessary to

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accomplish such purposes.

5. Electronic PHI Security Rule Obligations.

5.1 With respect to *Electronic PHI*, *Business Associate* shall:

- a) Implement and use Administrative, Physical, and Technical Safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312;
- b) Identify in writing upon request from Covered Entity all the safeguards that it uses to protect such *Electronic PHI*;
- c) Prior to any Use or Disclosure of *Electronic PHI* by an *Agent* or *Subcontractor*, ensure that any *Agent* or *Subcontractor* to whom it provides *Electronic PHI* agrees in writing to implement and use Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of *Electronic PHI*. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *Electronic PHI*, and be provided to Covered Entity upon request;
- d) Report in writing to Covered Entity any *Successful Security Incident* or *Targeted Unsuccessful Security Incident* as soon as it becomes aware of such incident and in no event later than five (5) business days after such awareness. Such *Report* shall be timely made notwithstanding the fact that little information may be known at the time of the *Report* and need only include such information then available;
- e) Following such *Report*, provide Covered Entity with the information necessary for Covered Entity to investigate any such incident; and
- f) Continue to provide to Covered Entity information concerning the incident as it becomes available to it.

5.2 Reporting *Unsuccessful Security Incidents*. *Business Associate* shall provide Covered Entity upon written request a *Report* that: (a) identifies the categories of Unsuccessful Security Incidents; (b) indicates whether *Business Associate* believes its current defensive security measures are adequate to address all *Unsuccessful Security Incidents*, given the scope and nature of such attempts; and (c) if the security measures are not adequate, the measures *Business Associate* will implement to address the security inadequacies.

5.3 *Business Associate* shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

6. Reporting and Documenting Breaches.

6.1 *Business Associate* shall *Report* to Covered Entity any *Breach* of Unsecured *PHI* as soon as it, or any Person to whom *PHI* is disclosed under this Agreement, becomes aware of any such *Breach*, and in no event later than five (5) business days after such awareness, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Such *Report* shall be timely made notwithstanding the fact that little information may be known at the time of the *Report* and need only include such information then available.

6.2 Following the *Report* described in 6.1, *Business Associate* shall conduct a risk assessment and provide it to Covered Entity with a summary of the event. *Business Associate* shall provide Covered Entity

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with the names of any *Individual* whose Unsecured *PHI* has been, or is reasonably believed to have been, the subject of the *Breach* and any other available information that is required to be given to the affected *Individual*, as set forth in 45 CFR § 164.404(c). Upon request by Covered Entity, *Business Associate* shall provide information necessary for Covered Entity to investigate the impermissible Use or Disclosure. *Business Associate* shall continue to provide to Covered Entity information concerning the *Breach* as it becomes available.

6.3 When *Business Associate* determines that an impermissible acquisition, Access, Use or Disclosure of *PHI* for which it is responsible is not a *Breach*, and therefore does not necessitate notice to the impacted *Individual*, it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). *Business Associate* shall make its risk assessment available to Covered Entity upon request. It shall include 1) the name of the person making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the *PHI* had been compromised.

7. **Mitigation and Corrective Action.** *Business Associate* shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible Use or Disclosure of *PHI*, even if the impermissible Use or Disclosure does not constitute a *Breach*. *Business Associate* shall draft and carry out a plan of corrective action to address any incident of impermissible Use or Disclosure of *PHI*. *Business Associate* shall make its mitigation and corrective action plans available to Covered Entity upon request.

8. **Providing Notice of Breaches.**

8.1 If Covered Entity determines that a *Breach* of *PHI* for which *Business Associate* was responsible, and if requested by Covered Entity, *Business Associate* shall provide notice to the *Individual* whose *PHI* has been the subject of the *Breach*. When so requested, *Business Associate* shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. *Business Associate* shall be responsible for the cost of notice and related remedies.

8.2 The notice to affected *Individuals* shall be provided as soon as reasonably possible and in no case later than sixty (60) calendar days after *Business Associate* reported the *Breach* to Covered Entity.

8.3 The notice to affected *Individuals* shall be written in plain language and shall include, to the extent possible: 1) a brief description of what happened; 2) a description of the types of Unsecured *PHI* that were involved in the *Breach*; 3) any steps *Individuals* can take to protect themselves from potential harm resulting from the *Breach*; 4) a brief description of what the *Business Associate* is doing to investigate the *Breach* to mitigate harm to *Individuals* and to protect against further *Breaches*; and 5) contact procedures for *Individuals* to ask questions or obtain additional information, as set forth in 45 CFR § 164.404(c).

8.4 *Business Associate* shall notify *Individuals* of *Breaches* as specified in 45 CFR § 164.404(d) (methods of *Individual* notice). In addition, when a *Breach* involves more than 500 residents of Vermont, *Business Associate* shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR § 164.406.

9. **Agreements with Subcontractors.** *Business Associate* shall enter into a Business Associate Agreement with any *Subcontractor* to whom it provides *PHI* to require compliance with HIPAA and to ensure *Business Associate* and *Subcontractor* comply with the terms and conditions of this Agreement. *Business Associate* must enter into such written agreement before any Use by or Disclosure of *PHI* to such *Subcontractor*. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *PHI*. *Business Associate* shall provide a copy of the written agreement it enters into with a *Subcontractor* to Covered Entity upon request. *Business Associate* may not

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make any Disclosure of *PHI* to any *Subcontractor* without prior written consent of Covered Entity.

10. **Access to PHI.** *Business Associate* shall provide access to *PHI* in a Designated Record Set to Covered Entity or as directed by Covered Entity to an *Individual* to meet the requirements under 45 CFR § 164.524. *Business Associate* shall provide such access in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any request for Access to *PHI* that *Business Associate* directly receives from an *Individual*.

11. **Amendment of PHI.** *Business Associate* shall make any amendments to *PHI* in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, whether at the request of Covered Entity or an *Individual*. *Business Associate* shall make such amendments in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any request for amendment to *PHI* that *Business Associate* directly receives from an *Individual*.

12. **Accounting of Disclosures.** *Business Associate* shall document Disclosures of *PHI* and all information related to such Disclosures as would be required for Covered Entity to respond to a request by an *Individual* for an accounting of disclosures of *PHI* in accordance with 45 CFR § 164.528. *Business Associate* shall provide such information to Covered Entity or as directed by Covered Entity to an *Individual*, to permit Covered Entity to respond to an accounting request. *Business Associate* shall provide such information in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any accounting request that *Business Associate* directly receives from an *Individual*.

13. **Books and Records.** Subject to the attorney-client and other applicable legal privileges, *Business Associate* shall make its internal practices, books, and records (including policies and procedures and *PHI*) relating to the Use and Disclosure of *PHI* available to the Secretary of Health and Human Services (HHS) in the time and manner designated by the Secretary. *Business Associate* shall make the same information available to Covered Entity, upon Covered Entity's request, in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether *Business Associate* is in compliance with this Agreement.

14. **Termination.**

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all the *PHI* is destroyed or returned to Covered Entity subject to Section 18.8.

14.2 If *Business Associate* fails to comply with any material term of this Agreement, Covered Entity may provide an opportunity for *Business Associate* to cure. If *Business Associate* does not cure within the time specified by Covered Entity or if Covered Entity believes that cure is not reasonably possible, Covered Entity may immediately terminate the Contract or Grant without incurring liability or penalty for such termination. If neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary of HHS. Covered Entity has the right to seek to cure such failure by *Business Associate*. Regardless of whether Covered Entity cures, it retains any right or remedy available at law, in equity, or under the Contract or Grant and *Business Associate* retains its responsibility for such failure.

15. **Return/Destruction of PHI.**

15.1 *Business Associate* in connection with the expiration or termination of the Contract or Grant shall return or destroy, at the discretion of the Covered Entity, *PHI* that *Business Associate* still maintains in any form or medium (including electronic) within thirty (30) days after such expiration or termination. *Business Associate* shall not retain any copies of *PHI*. *Business Associate* shall certify in writing and report to Covered Entity (1) when all *PHI* has been returned or destroyed and (2) that *Business Associate* does not continue to

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maintain any *PHI*. *Business Associate* is to provide this certification during this thirty (30) day period.

15.2 *Business Associate* shall report to Covered Entity any conditions that *Business Associate* believes make the return or destruction of *PHI* infeasible. *Business Associate* shall extend the protections of this Agreement to such *PHI* and limit further Uses and Disclosures to those purposes that make the return or destruction infeasible for so long as *Business Associate* maintains such *PHI*.

16. **Penalties.** *Business Associate* understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of *PHI* and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations.

17. **Training.** *Business Associate* understands its obligation to comply with the law and shall provide appropriate training and education to ensure compliance with this Agreement. If requested by Covered Entity, *Business Associate* shall participate in Covered Entity's training regarding the Use, Confidentiality, and Security of *PHI*; however, participation in such training shall not supplant nor relieve *Business Associate* of its obligations under this Agreement to independently assure compliance with the law and this Agreement.

18. **Miscellaneous.**

18.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Contract or Grant, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the Contract or Grant continue in effect.

18.2 Each party shall cooperate with the other party to amend this Agreement from time to time as is necessary for such party to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA. This Agreement may not be amended, except by a writing signed by all parties hereto.

18.3 Any ambiguity in this Agreement shall be resolved to permit the parties to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.

18.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule, Security Rule, and HITECH) in construing the meaning and effect of this Agreement.

18.5 *Business Associate* shall not have or claim any ownership of *PHI*.

18.6 *Business Associate* shall abide by the terms and conditions of this Agreement with respect to all *PHI* even if some of that information relates to specific services for which *Business Associate* may not be a "*Business Associate*" of Covered Entity under the Privacy Rule.

18.7 *Business Associate* is prohibited from directly or indirectly receiving any remuneration in exchange for an *Individual's PHI*. *Business Associate* will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. *Reports* or data containing *PHI* may not be sold without Covered Entity's or the affected Individual's written consent.

18.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for *Business Associate* to return or destroy *PHI* as provided in Section 14.2 and (b) the obligation of *Business Associate*

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to provide an accounting of disclosures as set forth in Section 12 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

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ATTACHMENT F
AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT/GRANT PROVISIONS

1. **Definitions:** For purposes of this Attachment F, the term "Agreement" shall mean the form of the contract or grant, with all of its parts, into which this Attachment F is incorporated. The meaning of the term "Party" when used in this Attachment F shall mean any named party to this Agreement *other than* the State of Vermont, the Agency of Human Services (AHS) and any of the departments, boards, offices and business units named in this Agreement. As such, the term "Party" shall mean, when used in this Attachment F, the Contractor or Grantee with whom the State of Vermont is executing this Agreement. If Party, when permitted to do so under this Agreement, seeks by way of any subcontract, sub-grant or other form of provider agreement to employ any other person or entity to perform any of the obligations of Party under this Agreement, Party shall be obligated to ensure that all terms of this Attachment F are followed. As such, the term "Party" as used herein shall also be construed as applicable to, and describing the obligations of, any subcontractor, sub-recipient or sub-grantee of this Agreement. Any such use or construction of the term "Party" shall not, however, give any subcontractor, sub-recipient or sub-grantee any substantive right in this Agreement without an express written agreement to that effect by the State of Vermont.
2. **Agency of Human Services:** The Agency of Human Services is responsible for overseeing all contracts and grants entered by any of its departments, boards, offices and business units, however denominated. The Agency of Human Services, through the business office of the Office of the Secretary, and through its Field Services Directors, will share with any named AHS-associated party to this Agreement oversight, monitoring and enforcement responsibilities. Party agrees to cooperate with both the named AHS-associated party to this contract and with the Agency of Human Services itself with respect to the resolution of any issues relating to the performance and interpretation of this Agreement, payment matters and legal compliance.
3. **Medicaid Program Parties** (*applicable to any Party providing services and supports paid for under Vermont's Medicaid program and Vermont's Global Commitment to Health Waiver*):

Inspection and Retention of Records: In addition to any other requirement under this Agreement or at law, Party must fulfill all state and federal legal requirements, and will comply with all requests appropriate to enable the Agency of Human Services, the U.S. Department of Health and Human Services (along with its Inspector General and the Centers for Medicare and Medicaid Services), the Comptroller General, the Government Accounting Office, or any of their designees: (i) to evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed under this Agreement; and (ii) to inspect and audit any records, financial data, contracts, computer or other electronic systems of Party relating to the performance of services under Vermont's Medicaid program and Vermont's Global Commitment to Health Waiver. Party will retain for ten years all documents required to be retained pursuant to 42 CFR 438.3(u).

Subcontracting for Medicaid Services: Notwithstanding any permitted subcontracting of services to be performed under this Agreement, Party shall remain responsible for ensuring that this Agreement is fully performed according to its terms, that subcontractor remains in compliance with the terms hereof, and that subcontractor complies with all state and federal laws and regulations relating to the Medicaid program in Vermont. Subcontracts, and any service provider agreements entered into by Party in connection with the performance of this Agreement, must clearly specify in writing the responsibilities of the subcontractor or other service provider and Party must retain the authority to revoke its subcontract or service provider agreement or to impose other sanctions if the performance of the subcontractor or service provider is inadequate or if its performance deviates from any requirement of this Agreement. Party shall make available on request all contracts, subcontracts and service provider agreements between the Party, subcontractors and other service providers to the Agency of Human Services and any of its departments as well as to the Center for Medicare and Medicaid Services.

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Medicaid Notification of Termination Requirements: Party shall follow the Department of Vermont Health Access Managed-Care-Organization enrollee-notification requirements, to include the requirement that Party provide timely notice of any termination of its practice.

Encounter Data: Party shall provide encounter data to the Agency of Human Services and/or its departments and ensure further that the data and services provided can be linked to and supported by enrollee eligibility files maintained by the State.

Federal Medicaid System Security Requirements Compliance: Party shall provide a security plan, risk assessment, and security controls review document within three months of the start date of this Agreement (and update it annually thereafter) in order to support audit compliance with 45 CFR 95.621 subpart F, *ADP System Security Requirements and Review Process*.

4. **Workplace Violence Prevention and Crisis Response** (*applicable to any Party and any subcontractors and sub-grantees whose employees or other service providers deliver social or mental health services directly to individual recipients of such services*):

Party shall establish a written workplace violence prevention and crisis response policy meeting the requirements of Act 109 (2016), 33 VSA §8201(b), for the benefit of employees delivering direct social or mental health services. Party shall, in preparing its policy, consult with the guidelines promulgated by the U.S. Occupational Safety and Health Administration for *Preventing Workplace Violence for Healthcare and Social Services Workers*, as those guidelines may from time to time be amended.

Party, through its violence protection and crisis response committee, shall evaluate the efficacy of its policy, and update the policy as appropriate, at least annually. The policy and any written evaluations thereof shall be provided to employees delivering direct social or mental health services.

Party will ensure that any subcontractor and sub-grantee who hires employees (or contracts with service providers) who deliver social or mental health services directly to individual recipients of such services, complies with all requirements of this Section.

5. **Non-Discrimination:**

Party shall not discriminate, and will prohibit its employees, agents, subcontractors, sub-grantees and other service providers from discrimination, on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, and on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. Party shall not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity as provided by Title 9 V.S.A. Chapter 139.

No person shall on the grounds of religion or on the grounds of sex (including, on the grounds that a woman is pregnant), be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by State of Vermont and/or federal funds.

Party further shall comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, requiring that contractors and subcontractors receiving federal funds assure that persons with limited

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English proficiency can meaningfully access services. To the extent Party provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services, such individuals cannot be required to pay for such services.

6. Employees and Independent Contractors:

Party agrees that it shall comply with the laws of the State of Vermont with respect to the appropriate classification of its workers and service providers as “employees” and “independent contractors” for all purposes, to include for purposes related to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party agrees to ensure that all of its subcontractors or sub-grantees also remain in legal compliance as to the appropriate classification of “workers” and “independent contractors” relating to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party will on request provide to the Agency of Human Services information pertaining to the classification of its employees to include the basis for the classification. Failure to comply with these obligations may result in termination of this Agreement.

7. Data Protection and Privacy:

Protected Health Information: Party shall maintain the privacy and security of all individually identifiable health information acquired by or provided to it as a part of the performance of this Agreement. Party shall follow federal and state law relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

Substance Abuse Treatment Information: Substance abuse treatment information shall be maintained in compliance with 42 C.F.R. Part 2 if the Party or subcontractor(s) are Part 2 covered programs, or if substance abuse treatment information is received from a Part 2 covered program by the Party or subcontractor(s).

Protection of Personal Information: Party agrees to comply with all applicable state and federal statutes to assure protection and security of personal information, or of any personally identifiable information (PII), including the Security Breach Notice Act, 9 V.S.A. § 2435, the Social Security Number Protection Act, 9 V.S.A. § 2440, the Document Safe Destruction Act, 9 V.S.A. § 2445 and 45 CFR 155.260. As used here, PII shall include any information, in any medium, including electronic, which can be used to distinguish or trace an individual’s identity, such as his/her name, social security number, biometric records, etc., either alone or when combined with any other personal or identifiable information that is linked or linkable to a specific person, such as date and place of birth, mother’s maiden name, etc.

Other Confidential Consumer Information: Party agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to and uses of personal information relating to any beneficiary or recipient of goods, services or other forms of support. Party further agrees to comply with any applicable Vermont State Statute and other regulations respecting the right to individual privacy. Party shall ensure that all of its employees, subcontractors and other service providers performing services under this agreement understand and preserve the sensitive, confidential and non-public nature of information to which they may have access.

Data Breaches: Party shall report to AHS, through its Chief Information Officer (CIO), any impermissible use or disclosure that compromises the security, confidentiality or privacy of any form of protected personal information identified above within 24 hours of the discovery of the breach. Party shall in addition comply with any other data breach notification requirements required under federal or state law.

8. Abuse and Neglect of Children and Vulnerable Adults:

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Abuse Registry. Party agrees not to employ any individual, to use any volunteer or other service provider, or to otherwise provide reimbursement to any individual who in the performance of services connected with this agreement provides care, custody, treatment, transportation, or supervision to children or to vulnerable adults if there has been a substantiation of abuse or neglect or exploitation involving that individual. Party is responsible for confirming as to each individual having such contact with children or vulnerable adults the non-existence of a substantiated allegation of abuse, neglect or exploitation by verifying that fact through (a) as to vulnerable adults, the Adult Abuse Registry maintained by the Department of Disabilities, Aging and Independent Living and (b) as to children, the Central Child Protection Registry (unless the Party holds a valid child care license or registration from the Division of Child Development, Department for Children and Families). See 33 V.S.A. §4919(a)(3) and 33 V.S.A. §6911(c)(3).

Reporting of Abuse, Neglect, or Exploitation. Consistent with provisions of 33 V.S.A. §4913(a) and §6903, Party and any of its agents or employees who, in the performance of services connected with this agreement, (a) is a caregiver or has any other contact with clients and (b) has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall: as to children, make a report containing the information required by 33 V.S.A. §4914 to the Commissioner of the Department for Children and Families within 24 hours; or, as to a vulnerable adult, make a report containing the information required by 33 V.S.A. §6904 to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. Party will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

9. **Information Technology Systems:**

Computing and Communication: Party shall select, in consultation with the Agency of Human Services' Information Technology unit, one of the approved methods for secure access to the State's systems and data, if required. Approved methods are based on the type of work performed by the Party as part of this agreement. Options include, but are not limited to:

1. Party's provision of certified computing equipment, peripherals and mobile devices, on a separate Party's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.
2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

Intellectual Property/Work Product Ownership: All data, technical information, materials first gathered, originated, developed, prepared, or obtained as a condition of this agreement and used in the performance of this agreement -- including, but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures and documents, which are prepared for or obtained specifically for this agreement, or are a result of the services required under this grant -- shall be considered "work for hire" and remain the property of the State of Vermont, regardless of the state of completion unless otherwise specified in this agreement. Such items shall be delivered to the State of Vermont upon 30-days notice by the State. With respect to software computer programs and / or source codes first developed for the State, all the work shall be considered "work for hire," i.e., the State, not the Party (or subcontractor or sub-grantee), shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

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Party shall not sell or copyright a work product or item produced under this agreement without explicit permission from the State of Vermont.

If Party is operating a system or application on behalf of the State of Vermont, Party shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Party's materials.

Party acknowledges and agrees that should this agreement be in support of the State's implementation of the Patient Protection and Affordable Care Act of 2010, Party is subject to the certain property rights provisions of the Code of Federal Regulations and a Grant from the Department of Health and Human Services, Centers for Medicare & Medicaid Services. Such agreement will be subject to, and incorporates here by reference, 45 CFR 74.36, 45 CFR 92.34 and 45 CFR 95.617 governing rights to intangible property.

Security and Data Transfers: Party shall comply with all applicable State and Agency of Human Services' policies and standards, especially those related to privacy and security. The State will advise the Party of any new policies, procedures, or protocols developed during the term of this agreement as they are issued and will work with the Party to implement any required.

Party will ensure the physical and data security associated with computer equipment, including desktops, notebooks, and other portable devices, used in connection with this Agreement. Party will also assure that any media or mechanism used to store or transfer data to or from the State includes industry standard security mechanisms such as continually up-to-date malware protection and encryption. Party will make every reasonable effort to ensure media or data files transferred to the State are virus and spyware free. At the conclusion of this agreement and after successful delivery of the data to the State, Party shall securely delete data (including archival backups) from Party's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

Party, in the event of a data breach, shall comply with the terms of Section 7 above.

10. Other Provisions:

Environmental Tobacco Smoke. Public Law 103-227 (also known as the Pro-Children Act of 1994) and Vermont's Act 135 (2014) (An act relating to smoking in lodging establishments, hospitals, and child care facilities, and on State lands) restrict the use of tobacco products in certain settings. Party shall ensure that no person is permitted: (i) to use tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001 on the premises, both indoor and outdoor, of any licensed child care center or afterschool program at any time; (ii) to use tobacco products or tobacco substitutes on the premises, both indoor and in any outdoor area designated for child care, health or day care services, kindergarten, pre-kindergarten, elementary, or secondary education or library services; and (iii) to use tobacco products or tobacco substitutes on the premises of a licensed or registered family child care home while children are present and in care. Party will refrain from promoting the use of tobacco products for all clients and from making tobacco products available to minors.

Failure to comply with the provisions of the federal law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. The federal Pro-Children Act of 1994, however, does not apply to portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

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2-1-1 Database: If Party provides health or human services within Vermont, or if Party provides such services near the Vermont border readily accessible to residents of Vermont, Party shall adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211 (Vermont 211), and will provide to Vermont 211 relevant descriptive information regarding its agency, programs and/or contact information as well as accurate and up to date information to its database as requested. The "Inclusion/Exclusion" policy can be found at www.vermont211.org.

Voter Registration: When designated by the Secretary of State, Party agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.

Drug Free Workplace Act: Party will assure a drug-free workplace in accordance with 45 CFR Part 76.

Lobbying: No federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendments other than federal appropriated funds.

AHS ATT. F 5/16/2018

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**ATTACHMENT G
BUSINESS PARTNER AGREEMENT**

This Business Partner Agreement (“Agreement”) is entered into by and between **the State of Vermont, Agency of Human Services operating by and through its Department of Vermont Health Access (“DVHA”) and Vermont Information Technology Leaders (VITL) (“Business Partner”)** as of **January 1, 2021** (“Effective Date”). This Agreement supplements and is made a part of the Contract to which it is attached.

DVHA and Business Partner (“the Parties”) agree to comply with the terms of this Agreement and the standards promulgated under the Patient Protection and Affordable Care Act of 2010 (Public Law 111-148) as amended by the Health Care and Education Reconciliation Act (Public Law 111-152), and referred to collectively as the Affordable Care Act (ACA), and 45 CFR §155.260, “Privacy and security of personally identifiable information.” Business Partner information that constitutes protected health information (PHI) may have additional standards to which the Business Partner must adhere, which would be set out in a separate agreement.

- 1. Definitions** All capitalized terms in this Agreement have the meanings identified in this Agreement and 45 CFR Part 155, “Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act.”
 - 1.1 The term “**Services**” includes all work performed by the Business Partner for or on behalf of DVHA that requires the access, collection, use and/or disclosure of personally identifiable information (PII).
 - 1.2 The term “**PII**” refers to personally identifiable information in any medium, including electronic, which can be used to distinguish or trace an individual’s identity, such as his/her name, social security number, biometric records, etc., either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name.
 - 1.3 The term “**Minimum Functions**” includes all work performed (or Contracted to be performed) pursuant to subparts D, E, H, and K of 45 CFR 155, if such work requires the Business Partner to create, collect, use, or disclose PII.
 - 1.4 The term “**Agreement**” refers to this Business Partner Agreement, which details the privacy and security requirements that the Parties must adhere to.
 - 1.5 The term “**Individual**” includes applicants, enrollees, and qualified individuals applying for coverage at the Vermont Health Insurance Exchange or Medicaid Agency.
 - 1.6 The term “**Breach**” means the loss of control, compromise, and unauthorized disclosure, acquisition, access, or use, and any similar term referring to situations where: (a) PII is used for an unauthorized purpose, or (b) persons other than authorized users have access or potential access to PII.

2. Authorized Uses/Disclosures of PII

- 2.1** Except as limited in this Agreement, Business Partner may only create, collect, use or disclose PII to the extent necessary to perform Services specified in the underlying Contract with DVHA. In the course of providing Services, Business Partner shall not use or disclose PII in any manner that would constitute a violation of 45 CFR §155.260 if used or disclosed by DVHA.
- 2.2** Business Partner may make PII available to its employees who need access to perform Services and/or Minimum Functions, provided that Business Partner makes such employees aware of the creation, collection, use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Business Partner must also require workforce compliance with 45 CFR §155.260 when employees create, collect, use, or disclose PII in the course of providing Services
- 3. Privacy Requirements** Uses and disclosures of PII to carry out the Services identified in the Contract must be of the minimum amount of PII necessary to perform the services. Business Partner may not create, collect, use or disclose PII gathered for the purposes listed in 45 CFR §155.260(a)(1) while performing Minimum Functions unless the creation, collection, use or disclosure is consistent with the

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written policies and procedures identified by the State in accordance with 45 CFR §155.260. In addition, Business Partner must ensure workforce compliance with these policies and procedures

4. Security Safeguard Requirements

Business Partner shall implement and use appropriate safeguards to prevent the use or disclosure of PII except as provided for by this Agreement, an Interconnection Security Agreement, if applicable, and as set forth in 45 CFR 155.260(a)(3)(vii) and (4).

5. Documenting and Reporting Breaches

Business Partner shall report to DVHA any Breach of PII as soon as it (or any of its employees or agents) becomes aware of such Breach, and in no case later than one (1) hour after it (or any of its employees or agents) become aware of the Breach. If DVHA determines that a Breach of PII occurred for which one of Business Partner's employees or agents was responsible, upon its request, Business Partner shall provide notice to the individual(s) whose PII was the subject of the Breach. When requested to provide notice, Business Partner shall consult with DVHA about the timeliness, content and method of notice, and shall receive DVHA's approval concerning these elements. The cost of notice and related remedies shall be borne by Business Partner. Business Partner shall also be responsible for any reporting as required by 9 V.S.A. § 2435.

6. Mitigation and Corrective Action Requirements Business Partner shall mitigate, to the extent practicable, any harmful effect that is known to it of a Breach of PII. Business Partner shall draft and carry out a plan of corrective action to address any incident of impermissible collection, use or disclosure of PII, subject to DVHA's prior review and written approval.

7. Requirements for Agreements with Third Parties Business Partner may only disclose PII to its agents, including subcontractors, for the purposes authorized by this Agreement. Business Partner shall ensure that any agent (including any subcontractor) to whom it provides PII received from DVHA or created or received by Business Partner on behalf of DVHA agrees in a written agreement to the same PII restrictions and conditions that apply through this Agreement to Business Partner. Business Partner must enter into the written agreement and obtain the prior written consent of DVHA before any use or disclosure of PII to such agent. The written agreement must identify DVHA as a direct and intended third party beneficiary with the right to enforce any Breach of the agreement concerning the use or disclosure of PII. Business Partner shall provide a copy of the signed agreement to DVHA upon request.

8. Termination

8.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by DVHA or until all of the PII provided by DVHA to Business Partner or created or received by Business Partner on behalf of DVHA is destroyed or returned to DVHA subject to Section 9.

8.2 If Business Partner breaches any material term of this Agreement, DVHA, without liability or penalty, may either: (a) provide in writing an opportunity and time frame for Business Partner to cure the breach and terminate the Contract if Business Partner fails to cure; or (b) immediately terminate the Contract if DVHA believes that cure is not reasonably possible. DVHA has the right to seek to cure any breach by Business Partner and this right, regardless of whether DVHA cures such breach, does not lessen any right or remedy available to DVHA at law, in equity, or under the Contract, nor does it lessen Business Partner's responsibility for such breach or its duty to cure such breach.

9. Responsibility for the Return/Destruction of PII

9.1 Business Partner, in connection with the expiration or termination of the Contract, shall return or destroy, at the discretion of DVHA, all PII received from DVHA or created or received by Business Partner on behalf of DVHA pursuant to the Contract that Business Partner still maintains within thirty (30) days after such expiration or termination. Business Partner shall not retain any copies of the PII. Within the thirty (30) day period, Business Partner shall certify in writing to DVHA that (1) all PII has been returned or destroyed, and (2) Business Partner does not continue to maintain any PII.

9.2 Business Partner shall provide to DVHA notification of any conditions that Business Partner believes

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make the return or destruction of PII infeasible. If DVHA agrees that return or destruction is infeasible, Business Partner shall extend the protections of this Agreement to such PII and limit further uses and disclosures of such PII to those conditions that make the return or destruction infeasible for so long as Business Partner maintains such PII.

- 10. Penalties** Business Partner understands that it may be subject to a civil penalty, in addition to other penalties that may be prescribed by law, resulting from the improper creation, collection, use or disclosure of PII. In addition, violations of this Agreement may result in notification by DVHA to law enforcement officials and regulatory, accreditation, and licensure organizations.
- 11. Training** Business Partner shall participate in training regarding the use, confidentiality, and security of PII at DVHA's request.
- 12. Miscellaneous**
 - 12.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Contract, the terms of this Agreement shall govern with respect to its subject matter. Otherwise the terms of the Contract continue in effect.
 - 12.2 Business Partner shall cooperate with DVHA to amend this Agreement from time to time as is necessary for DVHA to comply with 45 CFR §155.260 or any other standards promulgated under the ACA, or DVHA's contractual obligations to CMS.
 - 12.3 Any ambiguity in this Agreement shall be resolved to permit DVHA to comply with 45 CFR §155.260, or any other standards promulgated under the ACA, or DVHA's contractual obligations to CMS.
 - 12.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., the ACA) in construing the meaning and effect of this Agreement.
 - 12.5 As between Business Partner and DVHA, DVHA owns all PII provided by DVHA to Business Partner or created or received by Business Partner on behalf of DVHA.
 - 12.6 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement.

The following provisions apply only to those Business Partners that will be accessing Federal Tax Information (FTI).

As applicable, DVHA and Business Partner ("the Parties") agree to comply with the terms of this Agreement and the Language for General Services and Technology Services pursuant to IRS Publication 1075, Exhibit 7:

- 13. General Services; Performance** In performance of this Contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:
 - 13.1 All work will be performed under the supervision of the contractor or the contractor's responsible employees.
 - 13.2 Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone other than an officer or employee of the contractor is prohibited.
 - 13.3 All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
 - 13.4 No work involving returns and return information furnished under this Contract will be subcontracted without prior written approval of the IRS.

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13.5 The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.

13.6 DVHA will have the right to void the Contract if the contractor fails to provide the safeguards described above.

14. General Services; Criminal/Civil Sanctions

14.1 Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

14.2 Each officer or employee of any person to who returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such Person shall also notify such officer and employee that such authorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.

14.3 Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

14.4 Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review as part of the certification and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, /RC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information and Exhibit 5, IRC Sec. 7213 Unauthorized Disclosure of Information). The training provided before the initial

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certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

15. General Services; Inspection The IRS and DVHA shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this Contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.

16. Technology Services; Performance In performance of this Contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

16.1 All work will be done under the supervision of the contractor or the contractor's employees.

16.2 Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.

16.3 All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.

16.4 The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.

16.5 Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.

16.6 All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.

16.7 No work involving FTI furnished under this Contract will be subcontracted without prior written approval of the IRS.

17. Technology Services; Criminal/Civil Sanctions

17.1 Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil

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damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

17.2 Each officer or employee of any person to who returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such Person shall also notify such officer and employee that such authorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.

17.3 Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

17.4 Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review as part of the certification and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, /RC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information and Exhibit 5, IRC Sec. 7213 Unauthorized Disclosure of Information). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

18. Technology Services; Inspection The IRS and DVHA shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.

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Appendix I – Required Forms

**Department of Vermont Health Access
Subcontractor Compliance Form**

Date: _____

Original Contractor/Grantee Name: _____

Contract/Grant #:

Subcontractor Name: _____

Scope of Subcontracted Services:

Is any portion of the work being outsourced outside of the United States? ☐ YES ☐ NO
(If yes, do not proceed)

All vendors under contract, grant, or agreement with the State of Vermont, are responsible for the performance and compliance of their subcontractors with the Standard State Terms and Conditions in Attachment C. This document certifies that the Vendor is aware of and in agreement with the State expectation and has confirmed the subcontractor is in full compliance (or has a compliance plan on file) in relation to the following:

- ☐ Subcontractor does not owe, is in good standing, or is in compliance with a plan for payment of any taxes due to the State of Vermont
- ☐ Subcontractor (if an individual) does not owe, is in good standing, or is in compliance with a plan for payment of Child Support due to the State of Vermont.
- ☐ Subcontractor is not on the State's disbarment list.

In accordance with State Standard Contract Provisions (Attachment C), the State may set off any sums which the subcontractor owes the State against any sums due the Vendor under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided in Attachment C.

Signature of Subcontractor

Date

Signature of Vendor

Date

Received by DVHA Business Office

Date

Required: Contractor cannot subcontract until this form has been returned to DVHA Contracts & Grants Unit.

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Language to be included from State of Vermont Bulletin 3.5 in all subcontracting agreements:

Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

Taxes Due to the State:

- D.** Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- E.** Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- F.** Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- G.** Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

- D.** is not under any obligation to pay child support; or
- E.** is under such an obligation and is in good standing with respect to that obligation; or

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F. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

Certification Regarding Use of State Funds: In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside United States, except with the express written permission of the State.